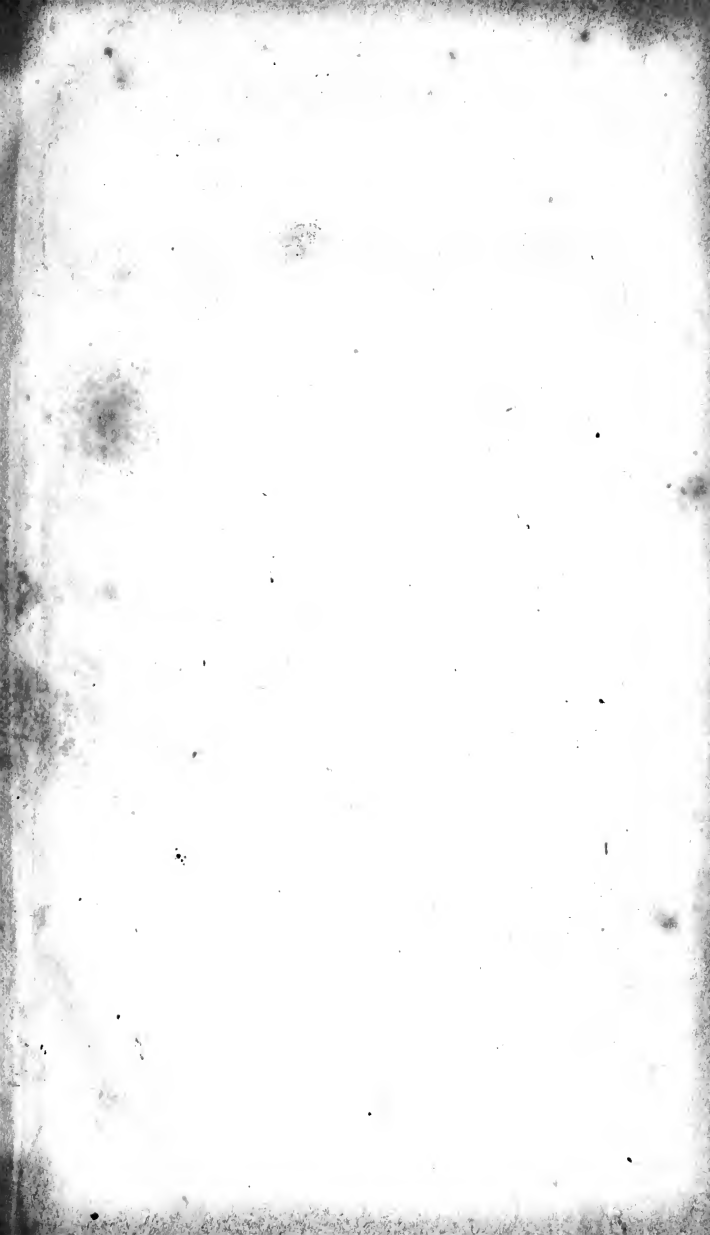
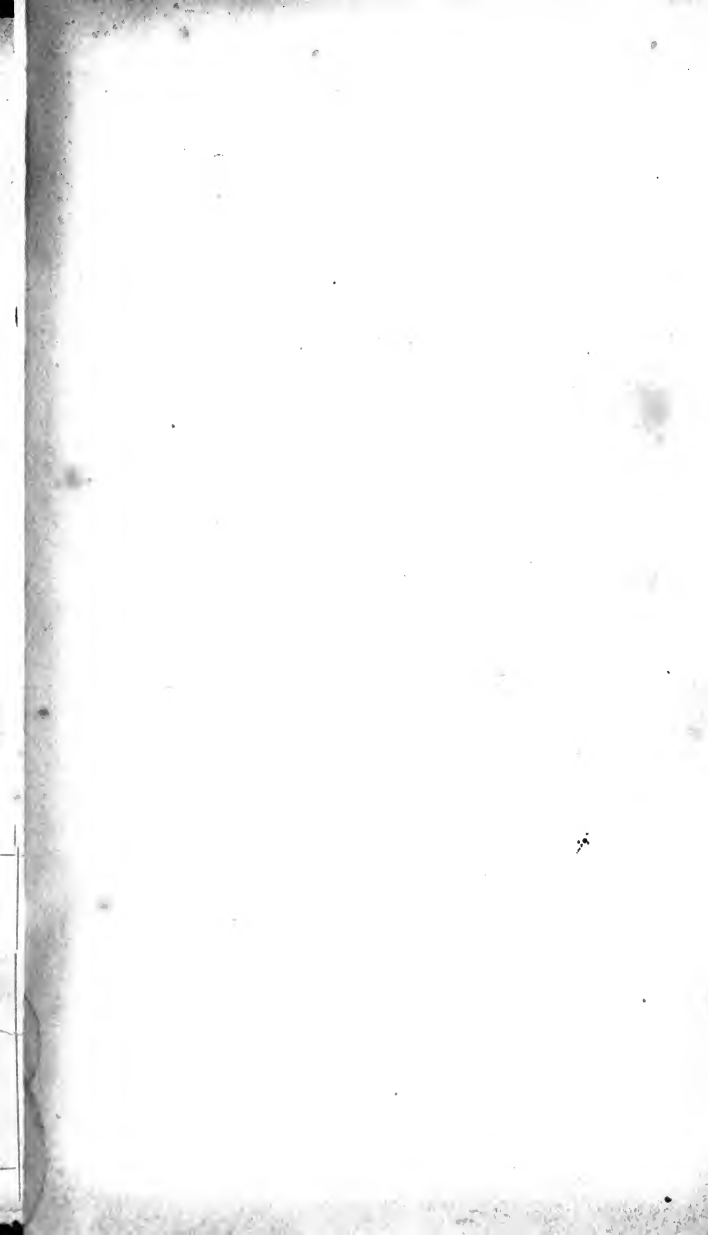


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# INTRODUCTION

TO THE

# SCIENCE OF GOVERNMENT,

AND

COMPEND OF THE CONSTITUTIONAL AND  
CIVIL JURISPRUDENCE OF THE  
UNITED STATES.

WITH A BRIEF

TREATISE ON POLITICAL ECONOMY.

DESIGNED FOR THE USE OF FAMILIES AND SCHOOLS.

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By ANDREW W. YOUNG.

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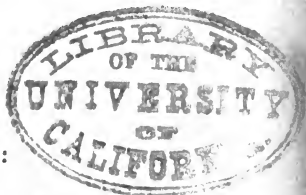
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## PREFACE.

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It is the peculiar fortune of the people of the United States, to live under a government that secures to them, in an extraordinary degree, the blessings of civil and religious liberty. It is believed that no other form of government is capable of conferring upon its citizens an equal amount of happiness.

Under our constitution, sovereignty resides with the people : in other words, they have the power of governing themselves. Consequently, it is of the first importance, that the depositories of political power should know how to apply this power intelligently and judiciously. The power to make and to administer the laws, is delegated to the representatives and agents of the people ; the people should therefore be competent to judge when, and how far, this power is constitutionally and beneficially exercised.

Distinguished as the American people are for their comparative general intelligence, a large portion of them, it must be confessed, are greatly wanting in political knowledge. And while so many books have been prepared to facilitate the means of instruction, and so much has been done in various ways to promote the interests of education generally, it is remarkable that the science of government has received so little attention.

Multitudes in this republic are annually arriving at that period of life, when they are to exercise, for the first time, their privileges as citizens. In the state of New York alone, the number is about *fifteen thousand*, and is composed, chiefly, of those whose education does not embrace even the first principles of political science. It is not to

be expected that political power, in such hands, can be exercised with safety to the government, or with benefit to the community.

In the education of youth for the business of life, it seems almost to be forgotten, that they are ever to assume the duties of *citizens*—duties of paramount importance, on the due performance of which, their individual happiness, as well as the happiness and prosperity of the nation, mainly depends.

The following just and forcible observations, are from a late report of the superintendent of common schools of the state of New York. They are entitled to the consideration of every citizen of this republic :

“On our common schools we must rely to prepare the great body of the people for maintaining inviolate the rights of freemen. If the political fabric cannot find in the public intelligence, a basis broad and firm enough to uphold it, it cannot long resist the shocks to which, through the collision of contending interests, it is continually exposed. Forty-nine out of every fifty of our citizens, receive their education in the common schools. As they advance to manhood, they are, for the most part, devoted to manual employments. Looking to their own industry as their only resource, and to its fruits as the boundaries of their personal desires, the object nearest their hearts is to see their country prosperous, the laws administered with order and regularity, and the political importance, which the constitution has secured to them, maintained undiminished. The controversies to which conflicting interests give birth, are to be put at rest by their decision. In the questions of policy which are presented to them, constitutional principles are frequently involved, and the relation they bear, and may in all future time bear to the government, is directly or indirectly affected. How important is it that their decisions should be as enlightened as they will be honest ; that with every motive to be upright and conscientious in the exercise of their political rights, they should combine also the capacity to maintain them with independence and discretion ! If they shall ever cease to bring to

the settlement of these great questions a sound and enlightened discrimination, they cannot fail to become the dupes of artful leaders, and their country a prey to internal discord. From the genius of our political institutions, popular education is our only security against present and future dangers. Ignorance is said to be the parent of vice. With us it would also be the parent of those fatal disorders in the body politic, which have their certain issue in anarchy."

In presenting this work to the public, the compiler intends to supply, in some measure, a deficiency that has too long existed in the course of education in this country. Several excellent treatises on the principles of government, and constitutional jurisprudence, have been published within a few years. But it is believed that of those which are intended as class books, none are, in all respects, well adapted to the use of our common schools.

But it is not for common schools exclusively, that this work is intended. It is believed that there are individuals in almost every family, who will find in it much valuable information to which they have not before had access.

The author has endeavored, throughout the work, to present each subject in a plain and familiar style; and it is believed the language will be found sufficiently intelligible to those who are of suitable age and capacity to be benefited by the study of this science. And he would here take occasion to remind the reader or student of the importance of referring to his dictionary for the definition of such words as he does not understand. Much of the advantage of reading is often lost, especially to young persons, by the neglect of this practice.

The questions relating to the several sections, are deemed useful in exercising the pupil. A few only are inserted, leaving it to the teacher to add such further interrogatories as he shall find necessary. Teachers will also find occasion to tax their own resources, in enlarging upon and illustrating the several subjects, which could not be fully treated, without swelling the work to an improper size.

Originality in a work of this kind is hardly to be expected:

Whatever of merit, therefore, may be awarded to this unpretending volume, is chiefly due to other and abler authors. Among the works to which the compiler is indebted, he would particularly mention, Sullivan's "Political Class Book," Chipman's "Principles of Government," Duer's "Outlines of Constitutional Jurisprudence," and the invaluable "Commentaries" of Story and Kent.

With the hope that this treatise, notwithstanding its imperfections, will be found in some degree useful, it is respectfully offered to the patronage of a liberal community.

*Warsaw, Oct. 1835.*

ADVERTISEMENT  
TO THE  
THIRD EDITION.

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Two editions of this work have been published, and disposed of principally in a few of the western counties of the state of New-York. Its favorable reception has induced the compiler to revise and essentially alter it, with a view to a more extended circulation. The former editions were designed more particularly for the state of New-York: the present edition is adapted to the states in general.

The several clauses of the constitution are introduced in the order in which they occur in that instrument, and copied in full. They are made conspicuous by being enclosed in double commas; and the number of the article, section, and clause is affixed to each. Thus, although the several clauses are separated from each other by intervening commentaries, any part of the constitution may be readily referred to.

It will be seen that similar subjects occur in different parts of the work; and that reference is made from sections in one part, to sections in another, where the same subject is considered. The reader will, in most cases, be benefited by examining the sections referred to.

The science of Political Economy is an essential part of education, and is beginning to receive that attention which its importance demands. Being nearly allied to the science of government, it was deemed proper to give the

subject a place in this work. Without a knowledge of this science, no person can perform, efficiently, the duties of a legislator, nor even those of a private citizen.

The treatises on economy which the compiler has consulted, are Smith's *Wealth of Nations*, and the works of Say and Wayland. He has not, however, on all subjects adopted the opinions of these authors.

It is to be remembered that this work is, as its title denotes, an "*introduction*" to political science, being intended to teach *elementary principles*, rather than to settle questions on which the most eminent statesmen and economists are divided. Most of these controverted questions have therefore been avoided. The few, however, which have been introduced, have been freely discussed; and antagonist reasons have been stated, that the political student may be enabled to form intelligent opinions on subjects of public concern. It was considered inexpedient to keep altogether out of view those arguments which he will hereafter be called to meet in the discharge of political or legislative duties.

It has been a prominent object of the author, to impress upon the public mind a due sense of the value of our republican institutions, while he has endeavored to illustrate clearly the principles upon which they are founded. If the attempt shall prove successful, he will consider his labors amply rewarded. And he indulges the hope that this volume, in its amended and improved form, will be acceptable to the public.

October 1839



# CONTENTS.

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## PART I.

### *Principles of Government.*

CHAPTER I. Government.—Capacity of Man for Society, and for Civil Government.....	Page 13
CHAP. II. Human Rights.—Natural, Civil, Political, and Re- ligious Rights and Liberty.....	15
CHAP. III. Laws.—The Law of Nature—Law of Revelation— Municipal Law—Law of Nations.....	19
CHAP. IV. Different Forms of Government.....	22
CHAP. V. Of Sovereignty—and of the Separation and Distri- bution of the Political and Civil Powers.....	25
CHAP. VI. The Manner in which Political Power is exercised..	29
CHAP. VII. To whom the Exercise of Political Power ought to be intrusted.....	31
CHAP. VIII. Legislative Power.—Organization and Division of the Legislature.....	34
CHAP. IX. Manner of Enacting Laws.....	38
CHAP. X. Executive Power.....	41
CHAP. XI. Judicial Power.....	45
CHAP. XII. Organization and Powers of Courts of Justice.....	50
CHAP. XIII. Institution of Juries.....	54
CHAP. XIV. Taxation.—Direct and Indirect Taxes .....	57

## PART II.

### *Government of the United States*

CHAP. I. Settlement and Government of the Colonies.....	61
CHAP. II. Causes of the Revolution—Independence declared— Confederation—Adoption of the Constitution .....	68

CHAP. III. Nature and Objects of the Union under the Constitution .....	74
CHAP. IV. Legislative Department—House of Representatives..	79
CHAP. V. The Senate .....	86
CHAP. VI. Elections—Meetings of Congress—Powers and Privileges of both Houses—Passing Bills .....	92
CHAP. VII. Powers of Congress.—Taxes, Duties, &c.....	100
CHAP. VIII. Power to borrow Money—Payment of the Public Debt.....	105
CHAP. IX. Regulation of Commerce.....	108
CHAP. X. Commerce continued—Navigation.....	113
CHAP. XI. Naturalization of Aliens—Bankruptcy.....	118
CHAP. XII. Money—Weight and Measures.....	123
CHAP. XIII. Post Offices and Post Roads .....	127
CHAP. XIV. Patents and Copy Rights.....	131
CHAP. XV. Piracies, Felonies, and Offences against the Law of Nations .....	136
CHAP. XVI. Declaration of War—Marque and Reprisal—Captures—Army and Navy.....	139
CHAP. XVII. Local Jurisdiction—District of Columbia, and other National Property .....	143
CHAP. XVIII. General Power to make all Necessary Laws.....	146
CHAP. XIX. Restrictions on the Powers of Congress .....	149
CHAP. XX. Restrictions on the Powers of the States.....	152
CHAP. XXI. Executive Department.—Term of Office, and Election of President and Vice President.....	155
CHAP. XXII. Qualifications and Compensation of President and Vice President.....	160
CHAP. XXIII. Powers and Duties of the President.....	163
CHAP. XXIV. Executive Auxiliaries.—Department of State—of the Treasury—of War—of the Navy—Attorney General...	169
CHAP. XXV. Judicial Department.—Organization and Powers of the several Courts .....	173
CHAP. XXVI. Treason .....	178
CHAP. XXVII. Effect of State Records—Privileges of Citizens—Arrest of Fugitives—Admission of States—Disposal of Public	

Property—Guaranty of Republican Form of Government to the States .....	180
CHAP. XXVIII. Provision for Amendments—Assumption of the Public Debt—Supremacy of the Constitution—Oaths and Tests—Ratification of the Constitution .....	183
CHAP. XXIX. Amendments to the Constitution .....	187

## PART III.

### *Civil Jurisprudence of the United States.*

CHAP. I. Rights of Persons.—Absolute Personal Rights.....	193
CHAP. II. Domestic Relations.—Husband and Wife .....	198
CHAP. III. Parent and Child—Infants—Guardian and Ward—Master and Apprentice—Hired Servants.....	202
CHAP. IV. Right of Property.—Real Property.....	205
CHAP. V. Personal Property—Contract of Sale.....	209
CHAP. VI. Bailment.....	214
CHAP. VII. Principal and Agent—Partnership .....	216
CHAP. VIII. Bills of Exchange—Promissory Notes.....	220
CHAP. IX. Rights of Landlord and Tenant.....	225
CHAP. X. Crimes and their Punishment.....	231

## PART IV.

### *Political Economy.*

CHAP. I. Definition of the Term.—Utility of the Science.....	237
CHAP. II. Production.—Definition of Terms.....	239
CHAP. III. The different kinds of Industry, and their Concurrency in Production .....	242
CHAP. IV. Capital—Its necessity in Production.....	247
CHAP. V. The use of Natural Agents in Production.....	249
CHAP. VI. Division of Labor.....	254
CHAP. VII. Division and Security of Property, an Encouragement to Industry.....	260
CHAP. VIII. The Encouragement of Domestic Industry by Protective Duties ....	263

CHAP. IX. The Encouragement of Domestic Industry by Protective Duties, continued.....	266
CHAP. X. The Encouragement of Domestic Industry, continued. —Origin of the Protective System in this country.....	271
CHAP. XI. Effects of the Protective System of this Country....	277
CHAP. XII. Effects of Internal Improvements on Productive Industry.....	281
CHAP. XIII. Exchange.—The Advantages of a Division of Labor in Exchange, and of the Frequency of Exchanges.....	284
CHAP. XIV. Origin of Money, and its Utility in Exchange.....	288
CHAP. XV. Sundry Facts concerning Money.....	292
CHAP. XVI. The Nature and Utility of Banks.—Banks of Deposit and Exchange.....	295
CHAP. XVII. Banks for Discounting Bills and Notes, or for Loaning Money.....	299
CHAP. XVIII. Banks of Deposit, Discount, and Circulation, and of Paper-Money .....	302
CHAP. XIX. Distribution.—Wages, or the Price paid for Labor..	308
CHAP. XX. Interest, or the Price paid for the Use of Capital.—Rent of Land.....	312
CHAP. XXI. Consumption.—Individual Consumption.....	318
CHAP. XXII. Public Consumption.....	322
The Declaration of Independence.....	328



## PART FIRST.

### PRINCIPLES OF GOVERNMENT.

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#### CHAPTER I.

*Government.—Capacity of Man for Society, and for Civil Government.*

§ 1. GOVERNMENT is the exercise of authority, or direction and restraint exercised over the actions of men. In a political sense, it signifies that form of fundamental rules by which a nation or state is governed, or by which the members of a body politic are to regulate their social actions. It means also the administration of public affairs, according to established constitutions, laws, and usages: and sometimes it signifies the persons or officers who make and administer the laws of a state or nation.

§ 2. Government presupposes that man is a social being. He is fitted, by the laws of his nature, for society and for civil government and laws. The Creator has so formed man, that he is dependent upon his fellow man. He stands in need of the assistance of creatures like himself, to preserve and protect his own being, and to enjoy the life of a rational animal. Nature has given to men the advantages of reason and speech, or at least the faculty of acquiring them by intercourse with their fellow beings. By conversing with each other, they are enabled to improve their reason and knowledge, and to find methods of supplying their wants, without that natural strength which is given to other animals.

§ 3. That mankind are by nature designed for society, may be inferred also from their disposition to associate with

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EXERCISES.—§ 1. What is government? § 2, 3. Wherein consist

each other. This natural appetite or propensity for association, and the pleasure which is derived from it, are common to all mankind. Without society, man would be destitute of rational enjoyment.

§ 4. Man is also fitted, by nature, for civil government and laws. He is capable of discerning his own wants and the wants of others. He has the faculty of acquiring a knowledge or perception of what is morally right or wrong, and a sense of obligation to do what is right, and to forbear to do what is wrong. His reason enables him to understand the meaning of laws, and to discover what laws are necessary to regulate human actions.

§ 5. Some have supposed that the savage or uncivilized state is capable of affording the highest degree of happiness; that the social improvements and civil government encourage vice, and cause the evils which exist in society. It is believed by others, that laws are necessary only to restrain the evil passions of men, and to prevent the miseries which they are prone to inflict upon each other: consequently, were all men virtuous and purely benevolent, laws for their government would be wholly unnecessary. If, however, it be admitted, that mankind are by nature formed for society, it is reasonable to conclude, that laws of some kind are necessary to regulate their social actions, and to secure to them the enjoyment of their natural rights, how virtuous soever they may be.

§ 6. Whatever may be true in respect to these several opinions, it must be admitted, that man is imperfect and fallible; and, being capable of vicious as well as virtuous actions, he is liable to deviate from the rule of rectitude, and to infringe the rights of others. So that, whether his transgression be the result of his ignorance, of the weakness of his judgment, or of the wickedness of his disposition, laws are necessary to prevent him from disturbing the happiness, or from injuring the person or property, of his neighbor.

§ 7. Hence, mankind have, from an early period, formed themselves into political communities, or bodies politic. A

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man's qualifications by nature for society? § 4. Wherein consists his capacity for civil government? § 5. What different opinions prevail concerning the effect of the social improvements and of laws upon mankind? § 6. Why are laws necessary? § 7. How are mankind

*community* is a society of people living under the same laws and regulations, and having common rights and privileges : as a commonwealth, state, or nation. A *body politic*, or *corporation*, means a number of persons formed or incorporated into one body, with the power of acting under one name. The word, corporation, is derived from the Latin, *corpus*, signifying body. A corporation has a perpetual succession. When the persons which constitute a corporation have passed off, and their places been taken by others, the corporation still exists. Every state, county, or town, as well as every bank or railroad company, authorized by law to act as a single person, is a corporation.

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## CHAPTER II.

### *Human Rights.—Natural, Civil, Political, and Religious Rights and Liberty.*

§ 8. GOVERNMENT is founded in the rights of man. To secure the free enjoyment of these rights is the proper object of civil institutions. *Right*, in the sense in which it is here used, means the just claim, ownership, or lawful title which a person has to any thing. Thus, a man has a right to the money or other property which he has earned by his labor, because he may dispose of it as he chooses. He has a right to his own body and mind : he may act and think as he will ; provided, however, that he does not injure others ; for all men have the same rights ; and no person has the right to disturb another in the peaceable enjoyment of his natural rights.

§ 9. The object and origin of good government are correctly stated in the American Declaration of Independence ; which declares, “ that all men are endowed by their Creator with certain unalienable rights ; that among these are life,

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associated for the purposes of government ? Define *communities* and *bodies politic*.

§ 8. What is the meaning of *right* ? § 9. What is the object of good

liberty, and the pursuit of happiness: that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; and that, when any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness."

§ 10. The rights of mankind are variously denominated: first, natural rights; secondly, political rights; and thirdly, civil rights. *Natural rights* are those which are founded in the laws of our nature; and are said to consist in the right of personal liberty, or the right to be free in our persons or bodies, and to use them as we think fit; in the right of personal security, which is the right to be protected against injury to our bodies or good name; and in the right of property, the right to enjoy and dispose of whatsoever belongs to us, as we think proper. These rights are also called *unalienable*, as they cannot be alienated, or justly taken from us. They may, however, be forfeited by crime. A man may be deprived of his liberty, to prevent his injuring others; and he may be justly fined or imprisoned for crimes committed against the good and wholesome laws of the community.

§ 11. *Political rights* are defined to be the rights and powers retained by the people in the constitution or fundamental law of the state. The right of electing or appointing the officers of the government, and the power of altering or amending the constitution, are rights conferred by the constitution, and are therefore called political rights. The distinction between political and civil rights is not made by all political writers. There is, however, an obvious distinction, which will be made more clearly to appear from the definition given, in another place, of the political and civil powers of government. (§ 41-47.)

§ 12. *Civil rights* are those which are secured to citizens

government? § 10. How are the various classes of human rights denominated? What are natural rights? § 11. What are political rights? § 12. What are civil rights? What is meant by the civil



by the civil compact. By *civil compact* is meant the agreement or contract, by the terms of which the members of a community are governed. The rights of personal liberty, personal security, and of private property, though denominated natural rights because they originate in the laws of social nature, are, when we speak of them as being guaranteed by civil laws, properly called civil rights.

§ 13. *Liberty*, in a general sense, is freedom from restraint, and is applicable to the body, will, or mind. It consists in the free exercise and enjoyment of one's rights; or in being free to act and think as he pleases. There is this difference between right and liberty: Right respects the claim or title which a person has to a thing; liberty, the free use and enjoyment of that right. A man's liberty may be destroyed; but his right to freedom will still remain. His property may be wrested from him; but his right to the same will not thereby be lost.

§ 14. *Natural liberty* consists in being free to act without constraint, except that which is imposed by the laws of social nature: or, moral or natural liberty is the permission which nature gives to all mankind of disposing of their persons and property in the manner they shall judge most consonant to their own happiness; on condition that they act according to the laws of nature; that they do not abuse this liberty to the injury of other men; and that they practise towards others those moral duties which these laws enjoin.

§ 15. It is a common sentiment, that mankind, in a state of civil society, do not enjoy natural liberty to its full extent. They imagine it to be that liberty which gives rein to the wicked passions of men, and leaves them free to pursue their own interest and happiness, to the prejudice of other men. Hence, it is maintained, that, on entering into civil society, man gives up a portion of his natural liberty, and of his natural rights. But the correctness of this sentiment does not clearly appear. If man be, by the laws of his nature, constituted a moral and social being, he can have no natural right to injure himself or others. Natural liberty accords with the principles of justice, which require every

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compact? § 13. What is *liberty*? § 14. Wherein does natural liberty consist? § 15. Does natural liberty imply the right of man to injure



man to love his neighbor as himself, and to seek the happiness of every other member of society as carefully as he seeks his own.

§ 16. *Civil liberty* is the liberty of men, in a state of society, to exercise and enjoy civil rights—rights guarantied by civil institutions. It is the liberty which a man enjoys, as a member of society, restrained by laws so far only as is necessary and expedient for the general advantage of the public. Civil liberty can exist in perfection only under laws which secure, in the highest degree possible, the welfare and happiness of the whole community.

§ 17. *Political liberty* is sometimes improperly spoken of as synonymous with civil liberty. But, though often confounded, these terms are distinct in their meaning. Political liberty denotes the free exercise and enjoyment of political rights and powers reserved to the people by the fundamental laws, the constitution of the state. It is by this liberty that the civil and religious liberties of the citizens of a nation or state are secured to them.

§ 18. Among the most important rights of mankind, is the *right of opinion*. This is a natural right; and, in all free governments, is secured by the civil and political laws. Hence, it is also called a civil and political right. It is the right which a man has to express and to publish his religious opinions, and his opinions on all subjects relating to the government. In exercising this right, however, he may not violate the rights of others, or disturb the good order of society. The right of a person to act agreeably to his religious opinion, is called the *right of conscience*; and his freedom to exercise and enjoy this right, is denominated *religious liberty*. This liberty, called also the liberty of conscience, is defined to be “the liberty which a man has of discussing and maintaining his religious opinions, and of worshipping God in that way and manner which he believes in his conscience to be most acceptable to his Maker.” The liberty of speech and of the press, and the liberty of conscience, are duly guarantied to the people of the United States.

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his fellow man? § 16. What is civil liberty? § 17. What is political liberty? § 18. What is understood by the right of opinion? What particular rights does it include? What is religious liberty?

## CHAPTER III.

*Laws.—The Law of Nature—Law of Revelation—Municipal Law—Law of Nations.*

§ 19. LAW, in its widest sense, signifies a rule of action, and is applied to all kinds of action, whether animate or inanimate, rational or irrational. According to established principles in nature, all matter tends to decay; all ponderous bodies determine towards the centre of the earth; heat and moisture promote the growth of plants. This invariable tendency of all species of matter to certain motions, changes, and relations, as well as those which govern human conduct, are called physical laws, or the laws of nature. *Law*, in a more limited sense, denotes the rules of human action; the precepts by which man, as a moral, social, and accountable being, is commanded to regulate his behavior.

§ 20. The *law of nature*, as applied to man, is a rule of action arising out of the natural relations which he sustains to his Creator and to his fellow men. As a creature, he must be subject to the laws of his Creator, on whom he is dependent. The will of the Creator is his law, and is called the law of nature. This law is founded in those relations of justice which existed in the nature of things prior to any positive precept; that is, it is a perfect rule for all rational and moral beings, and is right in itself, without depending on any positive command to make it so. It is that eternal law of right to which God himself conforms. Man, as a social being, is subject to the same law. He is in a measure dependent on his fellow beings. All men being created equal, each is bound by the unchangeable principles of natural justice, to render to all others that assistance which is necessary to make them as happy as himself.

§ 21. The *law of revelation* is that which is found in the Holy Scriptures, in which Divine Providence has directly revealed his will to mankind. This law is designed to aid man, in his present imperfect state, in acquiring a know-

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§ 19. What is *law*? § 20. What is meant by the law of nature? § 21. What is the law of revelation? What is the tendency of these

ledge of his duty to his Maker, and to his fellow men. This revealed or divine law agrees with the original law of nature. Both originate from the same source, are equally binding, and tend alike to promote the good of mankind. All human laws derive their force from the laws of nature and revelation; and so far as they are contrary to the natural or divine law, they are not morally binding upon men.

§ 22. Law, as the word is generally used, has reference to the government of men as members of the body politic; and signifies an established rule, prescribed by a competent authority in the state, commanding what its citizens are to do, and prohibiting what they are not to do. As it is designed to regulate the conduct of the members of a community, and to secure to them their civil rights, it is called municipal, or civil law. *Civil law* originally signified the Roman law; and it is sometimes still used to designate that law. *Municipal*, derived from a Latin word, had reference to the particular customs of a single *municipium*, or free town; but it is now, with sufficient propriety, applied to a state or nation governed by the same laws and customs.

§ 23. Of municipal or civil law there are two kinds; the written law, and the unwritten or common law. A *written law* is a law or rule prescribed or enacted by authority, and published and recorded in writing. It means nearly the same as statute. *Statute* is usually applied to acts of a legislative body consisting of representatives. In a monarchy, the laws of a sovereign are called edicts, decrees, ordinances. The *common law* is not written: it is founded on the principles of justice, and derives its binding force from long usage, established customs, and the consent of the nation. The common law of England was brought hither by our ancestors; and it is still the law of this country, except such portions as have been repealed by positive enactments or statutes.

§ 24. As all mankind cannot be united in a single community, they must necessarily divide into many, and form separate states and nations, independent of each other, and

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laws? § 22. To what has law generally reference? What is it called when used in this sense? § 23. Define written law, and common law. § 24. What is meant by the law of nations? Whence arises

yet, of necessity, maintaining a mutual intercourse. Hence arises another kind of law, called the law of nations. The *laws of nations* are those rules by which nations regulate their conduct towards each other. Writers on the laws of nations have divided them into three kinds: the natural, the conventional, and the customary laws of nations.

§ 25. The *natural law of nations* is the law of nature applied to nations or states as moral persons. It is also called the necessary law of nations, because nations are absolutely obliged to observe it; and it is called the internal law of nations from its being binding on the conscience. The law of nature applied to the affairs of nations, as well as when applied to the affairs of individual persons, aims at the general good of mankind. It requires each nation to do for others what their necessities demand, and what it is capable of doing, without neglecting the duties it owes to itself.

§ 26. But there are cases in which the law of nature is not applicable to states as to individuals. The individual members of a community are associated for their mutual benefit, under laws by which they agree to be governed. But as nations are independent of each other, each is the sole judge of its rights, and of the means and manner of obtaining satisfaction for injuries done by others. In disputes between two nations, each may judge for itself what its duty requires; and no other has a right to interfere otherwise than by peaceably endeavoring to reconcile the parties.

§ 27. A law of nations is *conventional*, when it is established by leagues or treaties. A *convention* is an assembly of persons who meet for civil or political purposes. Any agreement or contract between nations is deemed conventional, even though entered into without a formal meeting. A *treaty* is a bargain or contract between nations, by which they mutually promise to regulate their intercourse. This agreement is made by one or more persons appointed by each party, who meet for the purpose; and it becomes binding whenever it shall have been sanctioned or ratified by the governments of the respective parties.

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their necessity? § 25. What is the natural law of nations? § 26. Why is not the law of nature in all cases applicable to states as to individuals? § 27. When is the law of nations called conventional? What

§ 28. The *customary law of nations* is founded on usages and customs which have been long observed, and tacitly consented to, by nations. Any custom that has thus become established by long usage, is deemed binding upon all who have adopted it, until they expressly declare that they will no longer adhere to it. But no custom, however long observed, can have any binding effect, if its observance require the violation of a natural law; and such custom should be abandoned.

## CHAPTER IV.

### *Different Forms of Government.*

§ 29. THE design of every government is, or ought to be, to promote, in the highest degree, the general happiness and welfare of its citizens; and that must be considered the best form of government, which, when well administered, conduces most to this end: and from what has been said in the preceding chapters, it may be concluded, that this object is most nearly attained, when the members of a community enjoy the greatest freedom in the exercise of their natural rights. Very few, however, of the governments which have hitherto existed, have been well adapted to this purpose.

§ 30. Every government of which we have knowledge, is in some respects different from every other; though some writers have reduced all governments into three classes, monarchy, aristocracy, and democracy. But as these several forms of government have undergone material changes; and as in many of them some of the principles of each of these kinds of government are combined; a regular classification of them is perhaps impossible; and it cannot be very important. Governments may, however, be said to be either *arbitrary*, as when supreme or absolute power is exercised

is a convention? A treaty? § 28. What is meant by the customary law of nations? How long is it binding?

§ 29 What ought to be the design of every government? § 30.

by one man or a single body of men; *free*, as when the people govern themselves; or *mixed*, when the powers of government are divided between a king or other privileged persons, and men who are elected by the common people to represent them.

§ 31. A *monarchy* is a state or government in which supreme power is lodged in the hands of a single person. Such a state is usually called a kingdom, or an empire. This name is generally given to a large state only. The name of monarchy is sometimes applied to a state or kingdom, in which the chief magistrate has not supreme power; but in which he is limited by a constitution or laws. Hence we speak of *despotic* or *absolute monarchies*, and of *limited* or *mixed monarchies*.

§ 32. In a *despotism*, absolute power is exercised by one man, who has no guide but his own will. *Despot* is a word of Greek origin, signifying master, or lord. At a later period it became an honorary title, given by the Greek emperors to their sons and sons-in-law, when governors of provinces. At present it means an absolute ruler, as the emperor of Russia. In a narrower sense, it conveys the idea of tyranny. *Tyrant*, also, is of Greek origin, and has nearly the same meaning as despot, signifying king, or absolute ruler. These words had not originally the bad signification which is now attached to them. But as those who possess unlimited power usually abuse it, these words came at length to signify abuser of power.

§ 33. Turkey and Russia are despotic in a high degree. In Turkey, the sultan has unlimited control over the property and lives of his subjects, especially the highest officers of state, whom he can remove or put to death at his will. He makes laws, but is not subject to them. He is restrained only by the Koran and the fear of rebellion. The *Koran* is the bible of the Mahometans, containing the pretended revelations of their prophet. The people have no political rights; and such is their ignorance, that they seem not to know that they could be in a better condition.

What different classes of government exist? § 31. What is a *monarchy*? § 32. What is a *despotism*? Define despot and tyrant. § 33. What particular governments are despotic? What is the Koran?

§ 34. An *aristocracy* is a government in which supreme power is exercised by a privileged class of men, distinguished for their rank and wealth. The word is from the Greek, and means the government of the wisest or best. An *oligarchy* is a species of aristocracy. It is a government in which the supreme power is lodged in a few hands. This word is of similar origin, and signifies the government of a few. These words are now used in an odious sense.

§ 35. A *limited monarchy* is a government in which the people have some political rights. Great Britain and France are limited monarchies. In Great Britain the powers of government are in a king, nobles, and a body of men who represent the common people. The nobility are persons who are entitled by birth to the highest civil honors and privileges. These, with the archbishops and bishops, constitute the house of *lords*. The house of *commons* is composed of the representatives of cities, boroughs, and counties, and are chosen by persons possessing the property or qualifications required by law. These two branches of the government, when united in making laws, are called the *parliament*. All acts of parliament must be approved by the king before they become laws.

§ 36. In France, similar powers are exercised by a king, chamber of peers, and chamber of deputies. The king proposes the laws, makes appointments, and declares war. He nominates the peers, whose rank and dignity are somewhat similar to those of the English nobility. The deputies are elected by the electoral colleges. In the governments of Great Britain and France are combined the principles of monarchy, aristocracy, and democracy. They may therefore be called emphatically, *mixed governments*.

§ 37. A *democracy* is a form of government in which the supreme power is in the hands of the people collectively, or in which the people meet in one assembly, and enact and execute the laws. The governments of ancient Greece were democracies. Every freeman was a member of the legis-

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§ 34. What is an *aristocracy*? An *oligarchy*? § 35. What is a limited monarchy? By whom are the powers of government exercised in Great Britain? § 36. How are the powers of government divided in France? What kinds of governments are those of Great Britain and France? § 37. What is a democracy? § 38. What is the govern-



ature, and voted personally in the assembly of the people. But this cannot be done in a large community. An assembly composed of all the freemen of a single state of this union would be too numerous to transact business. In the small democracies of Greece, their legislative assemblies were so large as to render it impossible for them to act with due deliberation; and much confusion and disorder often prevailed in them. The word democracy is derived from the Greek, *demos*, people; and *kratos*, power, and means ruling by the people.

§ 38. The government of the United States, as well as that of each of the states composing the union, though often called a democracy, is more properly styled a republic. A *republic* is a state in which the powers of government are exercised by representatives elected by the people. Instead of enacting laws in person, the people choose a small number to represent them. Ours is therefore a *representative republic*; or it may with propriety be termed a *representative democracy*, as all power emanates from the people, though in part exercised through their representatives.

## CHAPTER V.

### *Of Sovereignty—and of the Separation and Distribution of the Political and Civil Powers.*

§ 39. In all governments there is what is called a sovereign, or supreme power. The word *sovereignty*, when applied to a nation, means only its independence. A nation or state which has the right of making its own laws, and the right of making war and treaties with other nations, is called a sovereign or independent state. But in its application to the internal government of a state, the word sovereignty has a different meaning. It signifies supreme power; power

ment of the United States called? What is the difference between a republic and a pure democracy?

§ 39. What is the meaning of sovereignty when applied to a nation? What is it when applied to the internal government of a state?

superior to all other power in the state. Thus, in a despotism, sovereignty is said to reside in the king or supreme ruler, who is called the sovereign. In a democracy, where the people possess the power of governing themselves, the people are called sovereign. In the strict sense of the term, however, sovereignty, or unlimited, supreme power, is to be found in those governments only in which the power is exercised by one man, or a single body of men.

§ 40. In mixed, as well as in free governments, power is limited and regulated by a constitution, or charter. A *constitution* is the fundamental law of a state or kingdom. It is called the *fundamental law*, because it is the foundation of all other laws; that is, all laws subsequently enacted must conform to this law. A constitution has also the nature of a contract, as it expresses the terms by which the citizens of a state mutually agree to be governed. The fundamental law of France is called a *charter*, which is a written instrument conferring certain powers and privileges. In Great Britain it is called a constitution, but it is not written. It consists of the aggregate of laws, principles, and usages which have been formed in the course of ages, and have become established by long observance or general sanction.

§ 41. A proper distribution and limitation of the powers of government is of the highest importance. By the distribution and limitation of power, is meant the division of the political and civil powers of a government, and the assigning of each particular class of powers and duties to separate agents. These several agents or branches of the government hold a check upon each other; and all are accountable to the people from whom they derive their power; and the people themselves, as well as their agents, are restrained by the constitution.

§ 42. The division and limitation of the powers of government have been most happily effected by the constitution of the United States. The political power, that of forming or altering the constitution, the political laws, and of electing the officers of government, is retained and exercised by the

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§ 40. How is power limited in mixed and free governments? What is a constitution? A charter? § 41. What is meant by the distribution and limitation of power? § 42. What is political power? Civil

people themselves. Another kind of power is that of making and administering laws for regulating the civil conduct of the citizens, called the civil power. Again the civil power is divided, and the several duties assigned to separate and distinct organs: to one of these is entrusted the power of enacting laws, called the legislative power; to another, the executive power, or the power to execute and administer the laws; and to another the power of judging of and applying the laws, called the judicial power. These several depositories of power are so constituted as to ensure an independent and faithful discharge of their duties.

§ 43. In the mixed governments before mentioned, the civil power is divided and exercised in nearly the same manner as in this country. The civil institutions of Great Britain, especially, are in a great degree similar to our own. Indeed, ours may truly be said to be but an improvement of the model furnished by England. There is in both governments a separation of the legislative, executive, and judicial powers; and each of these powers, in both, is subject to nearly the same restrictions and limitations.

§ 44. There are material defects, however, in the government of these limited monarchies. These defects consist chiefly in the limited extent to which political rights are enjoyed by the people, and in the want of a separation of the political and civil powers of the government. The election of the chief magistrate and the members of the higher branch of the legislature, are political rights which are denied to the people. The king obtains his power by hereditary right, or right of birth; that is, he inherits it as property from his ancestors, and retains it by right during life. Thus he acquires and holds official power, independently of the people, and often contrary to their wishes. The nobles and peers also are independent of the people, obtaining their official power by right of birth, or by appointment of the king.

§ 45. The other defect in mixed governments is the absence of a proper distinction between the political and civil

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power? How is the civil power divided? § 43. How is the civil power divided in England? § 44. In what respects are mixed governments defective? § 45. What other defect? § 46. What is the fault

powers. Their legislatures possess both the civil and political powers of legislation. They have the same power to make or alter a law that relates to the constitution, as to enact or repeal laws that relate to the civil administration. Their laws cannot therefore be adjudged unconstitutional.

§ 46. Other forms of government are in these particulars still more defective. In a despotic government, as the people enjoy no political rights, there are no political laws binding on the ruler. In a democracy, each citizen has an equal voice in passing all laws, both of a civil and political nature, and in the appointment of those who administer the laws. Thus enjoying political liberty without restraint, the government will be unstable as the popular sentiment; the laws are liable to change as often as every new faction predominates; and generally the minority are made to suffer from oppressive and unequal laws.

§ 47. In a representative form of government, in which the political rights of the people, and the civil powers of the government, are separately exercised, the evils incident to other governments are happily avoided. The government of the United States, in this, as in many other respects, furnishes an example of the superiority of this form of government over every other. The constitution wisely provides for the security of civil liberty, while it lays all necessary restraint upon the exercise of political power. It effectually and entirely separates the political from the civil power, reserving the former to the people. It divides the civil powers into legislative, executive, and judicial, defines the powers which belong to these several branches of the government, and confines each within its appropriate sphere of action. This system has been satisfactorily tested by the people of the United States, and is justly regarded as a model of government to other nations.

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of a despotic government in this respect? Of a democracy? § 47. What are the characteristics of a representative form of government?

## CHAPTER VI.

*The manner in which Political Power is exercised.*

§ 48. FOR the more convenient exercise of political power, as well as for the civil administration, a state of considerable extent must be divided into districts of smaller territory. Indeed, without such division, the purposes of government could not be carried into effect. It has been remarked, that the people of a state, being too numerous to meet in one vast assembly to make laws and transact the public business, elect a small number to represent them. But to elect these representatives and other officers, and to make the constitutional or fundamental law of the state, are political duties, which must be performed in a personal and collective capacity. Hence the necessity of small territorial divisions, in which the people may assemble within their respective districts for political purposes.

§ 49. The smallest division of a state is into towns. Several of these compose a county, and several counties the state. These districts correspond to similar institutions in England, the country of our ancestors. Counties and towns are incorporated by a general law of the state. Like all other corporations they have the power of acting under one name, and of managing their local concerns.

§ 50. Of equal necessity are these divisions to facilitate the civil administration. The general law-making power of a state cannot extend its supervision to all the minute interests which are continually springing up in every section of the state. Besides, these minor concerns can generally be best regulated by some competent authority in the neighborhood where they arise. No less does the effectual dispensation of justice require such a division. A single state court could not investigate all the cases which would be brought before it for adjudication. Persons obliged to have recourse to the laws to obtain satisfaction for wrongs, would either sustain farther injury by delay, or entirely fail of ob-

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§ 48. Why is the division of a state necessary? § 49. How is a state divided? § 50. Describe the conveniences of a division of a

taining justice. Crime would be encouraged and multiplied, because offenders, in many cases, must needs go unpunished. And witnesses, as well as parties to suits at law, would be subjected to much inconvenience and expense in attending court from the remote parts of the state.

With these brief and general observations on the necessity of the division of a state into towns and counties for civil and political purposes, we shall proceed to show the manner in which political and civil powers are exercised by the people of the United States.

§ 51. First, political power. Perhaps the most important act in which the people of a state exercise their political rights, is that of making and establishing a constitution, or form of government. It is important, because it is to be the guide of those to whom the administration of the government shall be committed, and must consequently affect, favorably or unfavorably, the interests of every citizen.

§ 52. A state constitution is generally formed in nearly the following manner: A number of delegates, as they are usually called, corresponding generally to the number of representatives which compose the legislature of the state, represent the inhabitants of the several towns or counties, and are chosen by the electors in the same manner as representatives in the state legislature are chosen. These delegates meet in convention, and agree upon a form of rules for the government of the state. These rules, which have the nature of articles of agreement between the citizens, are then proposed to the people for their adoption. The people, after having had sufficient time to consider these articles, again meet in their respective towns, and vote directly for or against the proposed constitution. If a majority of the electors vote in favor of its adoption, it is declared to be the constitution of the state.

§ 53. Again, political power is exercised in electing the public officers, required by the constitution or by law to be elected by the people, to serve in the several administrations of state, counties, and towns. The electors meet in their

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state for civil purposes. § 51. What is the first act of political power? § 52. Describe the manner of forming a state constitution. § 53. For what other purpose is political power exercised? Describe the manner

respective towns, and each votes for the persons he wishes to be elected. The manner of voting is generally by ballot. A *ballot* is a small piece of paper, on which are printed or written the name of the candidate, and the title of the office to be filled. The electors present their ballots to the person authorized to receive them, and by him they are deposited in a box. Another mode of voting, practised in some states, is *viva voce*, which means, by the living voice, the elector speaking the name of the person for whom he votes.

§ 54. The election of candidates is decided either by a majority or plurality of the votes. Election by *majority* is when any person has a majority, or more than one half of all the votes given. An election by *plurality* is when the person elected has received more votes than any other candidate. The latter, it is believed, prevails in most of the states, especially in the election of the lower officers. It often happens, that, by the former, there is no election at the first trial, no one candidate having received a greater number of votes than all the rest; and the people sometimes find much difficulty in effecting a choice, as several trials become necessary. The latter mode, by plurality, is liable to this objection, that, when the people are divided upon numerous candidates, a person may be elected by a small number of votes, and therefore the interests or wishes of a majority of the people may not be represented.

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## CHAPTER VII.

*To whom the Exercise of Political Power ought to be entrusted.*

§ 55. To what class or portion of the citizens of a state political power shall be entrusted, is properly made the subject of express provision in the constitution; but owing

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of voting. § 54. What is election by majority? What by plurality? To what objection is each of these modes liable?

§ 55. What is the right of exercising political power called? § 56.

to a diversity of opinion among the people of this country respecting the right of suffrage, the qualifications of electors, as fixed by the constitutions of the several states, have been very unlike. The *right of suffrage*, called also the elective franchise, means the right of voting, or the right of a citizen to a voice in the election of officers, and in making or adopting the constitution, the political law of the state.

§ 56. The American colonies, following the example of the parent country, restricted the right of suffrage to those who possessed a certain amount of property. After they became independent states, a similar restriction was adopted by the people in forming the several state constitutions. In general, none but freeholders were allowed the privilege either of holding public offices, or of voting. A *freeholder* is a man who holds a real estate in his own right, which he may transmit to his heirs. In some states the right was extended to those who possessed personal property to a considerable amount. The property qualification, however, has been nearly abolished in the United States. In most of the states, all free white male citizens, with few exceptions, enjoy the right of suffrage.

§ 57. It is maintained by some, that those only who have property to be protected by law, and who are compelled to defray the expenses of the government, are justly entitled to a voice in it; that men of property, from their superior advantages of acquiring education, are generally more competent than the poor to take a part in political affairs: also, that poverty and ignorance, which render a man unfit to be entrusted with political power, are most common among the vicious part of the community. If, therefore, the right of suffrage be enjoyed by all, without distinction, ignorant and unprincipled men may obtain control of the government.

§ 58. In favor of universal suffrage it is said, that all men have rights which need the protection of government, especially in a free government, where all are, or ought to be, possessed of equal privileges. The way to wealth is open

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To what class of persons was the right of suffrage confined in the colonies? What is a freeholder? How far has the right of suffrage been extended? § 57. What are the reasons generally given in favor of a restricted suffrage? § 58, 59. What may be said in favor of uni-



to every citizen ; and the laws affect a man as certainly in acquiring property as in its actual possession. Besides, by the restriction of the right, many of the best citizens are denied a voice in the government ; and the state also is deprived, in many cases, of the services of men who, for the want of property, cannot be elected to office, however distinguished they may be for their capability and integrity.

§ 59. The property qualification is still advocated by some of the most sincere friends of republican institutions. And it is doubtless true, that it is attended with some advantages. Public opinion, however, has decided in favor of an extended suffrage, as being more consistent with the principles of free government. The former makes an unjust distinction between the rich and the poor ; and it is by no means generally admitted, that it secures a greater degree of wisdom and virtue in the administration of the state, than universal suffrage. None will presume to declare that property itself either confers merit, or entitles its possessor to unequal privileges ; and a restricted franchise, founded on this basis, certainly savors of aristocracy.

§ 60. By universal suffrage, however, it is not meant that this right must be indiscriminately enjoyed by all, without limit or qualification. This right, though invaluable to freemen, is liable to abuse, and needs to be wisely guarded. Hence females, to whom nature has assigned a more limited sphere of action, are excluded from a participation in public affairs. Age is an essential qualification. A person should also be free from constraint or control by others. Twenty-one years, the period at which men become free to act for themselves, and are presumed to have attained the requisite knowledge and maturity of judgment, is the age at which they are invested with this right. Foreigners also, who must be supposed to be ignorant of our institutions, and wanting in their attachment to them, are properly excluded. And persons who, by the commission of certain crimes, have proved themselves to be too corrupt to be safely trusted with political power, are justly denied the right of suffrage.

§ 61. Virtue and intelligence are the best safeguards to

versal suffrage ? § 60. What classes of persons are properly excluded ?

§ 61. What affords the best security to free institutions ?

republican institutions. We cannot reasonably hope that our government will be long preserved, after the people shall have become too ignorant and too corrupt to act for the public good. A government ought therefore to guard the public morals, and to promote the general diffusion of useful knowledge, as the only sure means of its preservation. In accordance with this sentiment, most of the states of this union have adopted, or are maturing, systems of learning, by which the benefits of a practical education may be shared by all classes of the community. When these benefits shall be universally enjoyed, we may indulge the hope that our civil and religious liberties will be enduring.

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## CHAPTER VIII.

### *Legislative Power.—Organization and Division of the Legislature.*

§ 62. THERE is in every state, a general legislative, or law-making power. The legislature is composed of two branches, a senate and house of representatives. The latter, or lower branch, is differently styled in different states, being called also the house of delegates, the assembly, the house of commons, and sometimes simply, the house. The legislature, or both branches united, are sometimes termed, general assembly, and general court.

§ 63. The house of representatives is the more numerous body, consisting, generally, of three or four times as many members as the senate. They represent more immediately the people of the several towns and counties in which they reside. In some of the states, one or more are elected in each town by the people to represent them in the legislature; in other states, a certain number of representatives are apportioned to each county, according to its proportion of the whole number of the inhabitants of the state.

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§ 62. How is the legislature of a state divided? § 63. How is the house of representatives composed? § 64. How long do representa-

§ 64. Representatives are usually chosen for the term of one year; in a few of the states, they hold their offices for two years. They may be re-elected at the pleasure of the electors. Elections of representatives are made thus frequent, in order to ensure a faithful discharge of their duties. Were they elected for a very long term of years, or for life, they would be too independent of the people. Being permanently seated in power, they would feel less responsibility to their constituents, than when they may be removed from office at the expiration of every year. Hence, a short term is deemed necessary to guard the public interests.

§ 65. The qualifications of representatives, as is also their term of office, are designated by the constitution. To be eligible to this office, a man should be of such age as to have had opportunity to acquire that knowledge of public affairs which young men, at the moment of their majority, seldom possess. He ought also to have been, for a considerable time, a citizen of the United States, and a resident of the state long enough to have become acquainted with its government and general policy. Accordingly, the age of twenty-four or twenty-five years, citizenship, and residence in the state for a term of years, have been made indispensable qualifications in all the states. In some of them, they must also possess a freehold, or other taxable property.

§ 66. Senators represent larger districts, comprising, generally, one or more counties. The character of a senate is somewhat different from that of the house. It is a more select body, its members being generally chosen for their superior wisdom, and longer experience in public affairs. It is designed also to be a more stable and independent body. The term of office of its members is made longer than that of representatives, that in their conduct they may be less influenced by the fear of removal from office. In some of the states, this body is so organized, that a part only of its members go out of office every year. By this arrangement, there will always remain in the senate a large number who are experienced in legislation, and better qualified than new

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tives in state legislatures generally hold their offices? Why is their term of office thus short? § 65. What are the general qualifications of a representative? § 66. In what respects is the character of a

members to complete the unfinished business of preceding sessions.

§ 67. The division of a legislature into two co-ordinate branches, is intended to prevent the enactment of improper laws. An injudicious measure may be introduced into a legislative body, and passed without due deliberation. Or, a salutary measure in its general provisions, having been hastily adopted, may be imperfect in some of its details. It is wisely provided, therefore, in all our constitutions, that every measure proposed and passed by either house, shall be subjected to the revision of the other; by which it may be amended or wholly rejected.

§ 68. A primary object of the institution of a senate is to hold in check the popular branch of the legislature. The election of representatives occurring so frequently, this body is rendered unstable and fluctuating by those sudden convulsions in public sentiment which are common in democratic governments; and, without some restraint upon its action, the administration would become equally fluctuating; the laws enacted one year would be liable to alteration and repeal by every successive legislature; and consequently there would be little security to the rights of person and property.

§ 69. Among the important trusts committed to the senate, is the power of appointment, which it exercises, in conjunction with the governor, in appointing such officers of the government as are not elected by the people. Other weighty responsibilities often devolve upon this body. Its members ought, therefore, to be men possessing, in an eminent degree, the qualifications of wisdom, experience, and incorruptible integrity.

§ 70. The legislature of every state meets at least once in a year, on the day designated by the constitution, to make such laws as the general welfare may require, and to perform such other duties as are assigned to it by the constitution and the laws. The duration of its sessions are not

senate different from the lower branch? § 67. Why is a legislature divided into two branches? § 68. What are the advantages of a senate? § 69. What power does it exercise with the governor? § 70. How often does a legislature meet; and for what purpose?

limited to any specific period, being continued until the most important subjects demanding its consideration shall have been disposed of.

§ 71. The first business of a legislature, on its meeting, is the organization of the respective houses, by the appointment of the necessary officers. Each house elects from its number a *speaker*, to preside over its deliberations during the session. The duties of a speaker are, to give direction to the business of the house, to enforce the rules of the house, to preserve order in debate, and to put the questions in taking the sense of the house on a proposed bill or resolution. Questions of order often arise in the course of debate which it is not easy for the speaker to decide. This renders his duties very arduous, and sometimes extremely perplexing. The choice of a speaker ought therefore to fall upon an individual who is prompt in his decisions, and familiar with the established usages of legislative bodies. In those states in which there is a lieutenant-governor, this officer usually presides in the senate.

§ 72. Besides the speaker, each house chooses from the citizens at large, a *clerk*, or secretary, to keep a record of its proceedings; a *door-keeper*; and a *sergeant-at-arms*, who is authorized to compel the attendance of members whenever it shall become necessary, and whose other duties are similar to those of a constable, or other peace officer in a court of justice. A clergyman also is usually chosen to serve as *chaplain*, whose duty it is to offer up prayer every morning at the opening of the session, and to perform such other religious services as shall be called for during the session.

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§ 71. How is a legislative body organized? What are the duties of a speaker? § 72. What other officers are chosen; and what are their respective duties?



## CHAPTER IX.

*Manner of enacting Laws.*

§ 73. IN order to transact the public business with despatch, each house, when duly organized by the election of its officers, appoints committees on all the ordinary subjects of legislation. To one committee is committed the subject of public expenditures; to another, all applications for canals and railroads; to another, petitions for banks and other incorporations; and so of all the general interests of the state. These interests are so numerous, that all, or nearly all the members of the house, are usually appointed to serve on one or more of the several committees. These are called *standing committees*. When any special matter arises which needs to be investigated, a committee is appointed for the purpose, called a *select committee*. Committees are sometimes appointed by the presiding officer.

§ 74. The necessity of this division of a legislative body into committees is obvious. So great are the number and diversity of subjects to be acted upon, that, if each of them were to receive the attention of the whole house, during the whole course of its investigation, a very small part only of these subjects could be disposed of. By dividing the business among the several committees, much time is saved, and the public business is expedited; as each committee, consisting usually of three, five, or seven members, is as capable of making inquiries into the merits of an application, and of obtaining the information necessary to aid the house in its final action on the subject, as the whole house.

§ 75. When a committee has duly examined any matter, such committee reports to the house the result of such examination; if the report be in favor of the proposed measure, it is usually accompanied by a bill. A *bill* is the original draft of a law. Bills may also be introduced by individual

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§ 73. After the appointment of officers, what is done preparatory to the transaction of business? What are standing committees? Select committees? § 74. Why is this division of a legislative body necessary? § 75. How are bills introduced? What is a bill? § 76, 77.

members. A member wishing to propose a bill must give at least one day's notice of his intention to move the house for leave to introduce it. If, on the day specified, he make the motion, and leave be granted, the bill is read.

§ 76. A bill must be read three times before it can be passed by either house ; and these several readings must be on different days, unless otherwise ordered by the unanimous consent of the house. And no bill can be committed or amended, until it shall have been read twice. When amended, it is declared to be ready to be committed or engrossed. To *engross* a bill, is to copy it in a large, fair hand. If the bill be committed either to a standing or select committee, or to a committee of the whole house ; or if the bill be ordered to be engrossed ; the house appoints a day on which it shall be read the third time. When the house resolves itself into a committee of the whole to consider a bill thus committed, the speaker appoints another member to preside as chairman, and takes part in the debate as an ordinary member.

§ 77. A bill may, at any time before its passage, be re-committed for farther consideration ; and when it has been reported on by a committee, or after it has been fully discussed and amended in the house, it is then proposed to be engrossed and read a third time. Then is the proper time for those opposed to the bill to take their stand against it.

§ 78. When a bill has passed one house, it is sent to the other, in which it must go through a similar form of examination and discussion. Whether it be agreed to, or amended, or wholly rejected, it is returned to the house in which it originated, with a message communicating the result. All amendments made in either house must be concurred in by the other, or the bill cannot become a law. In some cases, when the two houses cannot agree to the amendments, a committee of conference is appointed in each house. These committees report the result of their meeting to their respective houses ; and if no agreement or compromise be effected, the bill is lost. [The manner of passing bills, as above described, is substantially that which

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What is the progress of a bill through the different readings ? What is engrossing a bill ? § 78. When a bill has been passed by one house.

has been adopted by Congress, and which, with little if any variation, is practised in all the state legislatures.]

§ 79. An additional safeguard against the enactment of injudicious laws, is provided in the constitutions of many of the states, by requiring every bill, after it shall have been passed by both houses, to be presented to the governor for his approval, before it can become a law. But that the enactment of needful laws may not depend on the judgment or caprice of one man, it is made the duty of the governor, if he refuse to sign a bill, to return it to the house in which it originated, stating his objections to it. If, upon a reconsideration of the bill, it be again passed by both houses, a majority of two-thirds of each house concurring, it then becomes a law without the assent of the governor. Or, if he shall not return it within a certain number of days specified in the constitution, it will be a law, though not signed by him.

§ 80. This power of the executive to negative bills passed by the legislature, is familiarly called the *veto* power. In England, the king has an *absolute negative* upon all laws: that is, his approval is in all cases required; and there is no provision for the passage of a law without it. In this country, where this power is qualified by the provision authorizing its passage by the constitutional majority of two-thirds of each house, it is called a *qualified negative*.

§ 81. The propriety of such a power in a republican government has been much questioned. The constitutional provision requiring the concurrence of a majority of both branches of the legislature, is deemed by many to be a sufficient security against the enactment of bad laws; especially as the people have a remedy for such laws in the frequent elections of their rulers, by means of which the repeal of an obnoxious law may be speedily effected. It is said also against the propriety of a negative, that it is not to be presumed that a single man possesses more virtue and wisdom

what action must it receive in the other? § 79. What agency has the governor in the enactment of laws? If he refuse to sign a bill, how may it become a law? § 80. What is an absolute and a qualified veto? § 81. For what reasons is a negative power objected to? § 82. What are the objects of this power?



than a number of men ; and that the expression of the will of a majority of the representatives of the people ought to be deemed the expression of the will of the people themselves.

§ 82. It is presumed, however, that a majority of the people are satisfied with this principle in our government. Besides the security which it affords against the enactment of improper laws, it is intended to guard the executive from encroachments upon its rights by the legislative department. Without such a power of self-defence, a chief magistrate might be gradually stripped of his authority. And though the negative may be in some cases improperly applied, it is fair to presume, that if the public good do not so clearly require the passage of a law as to command the assent of two-thirds of each house of the legislature, no serious evil will ensue before relief may be had in a new election.

## CHAPTER X.

### *Executive Power.*

§ 83. THE executive power is that which is exercised in executing, or carrying into effect, the laws of the state. The necessity of such a power is admitted, wherever the principles of civil government are well understood. It is in accordance to the principle laid down in a preceding chapter, (§ 42,) and to the universal opinion of the people of the United States confirmed by experience, that the several powers of the government, viz. the legislative, executive, and judicial, ought to be separated and committed to distinct organs or agents.

§ 84. Not only has experience proved the utility of an executive power ; but it has proved also the propriety of devolving the responsibilities of this department upon a single person. The most necessary qualification of an executive, is energy. An eminent American statesman has well remarked, that “a feeble executive implies a feeble

execution of the government. A feeble execution is but another phrase for a bad execution: and a government ill executed, whatever it may be in theory, must be, in practice, a bad government." One man will act with greater promptness and decision than a number. Difference of opinion among the members of a plural executive, might frustrate the most important measures. Moreover, unity in the executive increases responsibility. An individual, sensible that for every improper act he alone must bear the censure, will not be so strongly tempted to do wrong, as when a part of the responsibility and blame may be shifted upon others.

§ 85. The plan of a single chief magistrate, associated with a number of counselors, has been tried with ill success, both in ancient as well as modern republics, and has been abandoned. These executive councils often embarrass and weaken the execution of a plan or measure, instead of facilitating it. The soundest statesmen, therefore, while they declare themselves in favor of a numerous legislature, as best calculated to secure the interests and privileges of the people, consider a single executive indispensable to a prompt and efficient execution of the laws.

§ 86. Respecting the duration of the office of chief magistrate, public opinion is not uniform. The terms for which the governors of the several states are elected, vary from one year to four years. An executive chosen for a short period, will, if his re-election be not prohibited, be more likely to act in conformity to the popular will. A longer term, on the other hand, is deemed more favorable to an independent discharge of his official duties; and, by enabling him to mature and carry into effect his measures of public policy, is better calculated to ensure stability in the administration, which is essential to the public prosperity.

§ 87. The manner of electing the executive is not uniform. In some of the states, the governor is chosen by the legislature. This mode, which formerly prevailed in many, perhaps a majority, of the old states, has long been growing

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executive power vested in a single person? § 85. What is the objection to executive councils? § 86. What are the tendencies of short and long terms of office of an executive? § 87. In what manner are

into disuse. It is now practised by very few of them. The constitutions of new states, and the amended constitutions of the old ones, with few exceptions, give the election of the chief magistrate to the people. This mode now prevails, it is believed, in all but one or two, and is more consistent with the character and genius of republican institutions.

§ 88. The dignity of the executive office, and the weight of its responsibilities, require that the incumbent possess the highest qualifications. The qualifications required for the office of governor are generally the same, or about the same, as those for the office of senator. Provision has been made, so far as it can be made by constitutional enactment, for closing this office against incompetent and unworthy men. But the wisest constitutional provisions will be unavailing, unless the people insist on the more important qualifications of political integrity and disinterested patriotism.

§ 89. The powers and duties of an executive are various, as well as important. Exercising a general supervision over the manifold interests of the state, it is his duty to see that they receive the attention of the government. He is not only to see that the laws are duly administered, but he must also notice their operation. Hence it is made his duty, by the constitution, to communicate by message to the legislature, at every session, the condition of the state, and to recommend such measures as, in his opinion, the public welfare requires. And he transacts all necessary business with the civil and military officers of government, and with the authorities of other states.

§ 90. The power to grant reprieves and pardons is, in nearly all the states, vested in the governor. *Reprieve* is the suspension, or putting off, of the execution of the sentence of the law upon a capital offender; *pardon* is the entire release of the criminal. The necessity of a pardoning power arises from the imperfection of human justice. A spirit of revenge may prompt one man to accuse another falsely; and, by inaccurate testimony, or a fallible jury, the

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executives generally chosen in the United States? § 88. What are the usual qualifications of a state executive? § 89. What are the ordinary duties of an executive? § 90. What are reprieves and pardons? Why is the pardoning power necessary in a government?

innocent individual may be convicted. But cases may occur, in which the guilt of the offender is clearly proved, when expediency and humanity may require his pardon. Laws do not always fix the exact degree of punishment. Offences of the same kind, committed by different persons, or under different circumstances, do not always deserve the same measure of punishment. Hence the executive sometimes *commutes* the penalty of the law; that is, he exchanges it for another of less severity.

§ 91. The power of appointment, also, is, to some extent, exercised by the chief magistrate. The extent and variety of the business of the executive department, requires the assistance of numerous subordinate officers. As the executive is responsible for the faithful performance of the duties devolving upon his department; and as he is presumed to be most competent to judge of the requisite number and qualifications of these officers; their selection is properly given to him. Besides, unexpected vacancies, and numerous other causes, often render immediate appointments necessary, in order to prevent the derangement of the public business which would result from the delay consequent upon an election by the people at large.

§ 92. But upon this power, as upon most others, the people have imposed a constitutional restraint. Considering it too important to be entrusted to one man, the concurrence of the senate is required in appointments devolved by the constitution upon the executive. He may make appointments to fill vacancies which happen when the senate is not in session; but they must be submitted to that body at its next session for approval. In all other cases, it will be seen, the executive has simply the privilege of nomination; that is, of naming to the senate the person he wishes appointed: and the senate may, from party or other unworthy considerations, abuse its power, by rejecting the nominations made by the governor. But senators, as a body, are seldom so void of self-respect and of a sense of their duty, as to withhold their assent to an unexceptionable nomination.

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§ 91. Why is the power of appointment vested in this officer? § 92. What restraint is laid upon this power?

## CHAPTER XI.

*Judicial Power.*

§ 93. THE judiciary is that branch of the government of a state to which are committed the interpretation of the laws, and the administration of justice. No form of government can be complete, without some power to decide disputes, to award justice to the citizens, and to punish crime, according to the laws of the state. This power ought to be kept separate from the legislative and executive. The union of the judicial with the other powers of the government in the same hands, would constitute an absolute despotism. It is the separation of the former from the latter, that so effectually secures to the people of this country the blessings of equal laws and impartial justice.

§ 94. The judicial department embraces all the courts of law and equity in which justice is administered; as well those instituted in the several towns and counties, as the supreme or superior courts of the state. The necessity of these inferior courts has been briefly stated. (§ 50.) It is to these that citizens in ordinary cases go to obtain justice. The business of the higher courts is to try causes in which large sums are in controversy; to rejudge causes that have been tried in the lower courts, but from whose decisions appeal has been made by the dissatisfied party; and also to try criminal offences of high grade.

§ 95. When it is considered that the security of the citizen in the enjoyment of his property, liberty, character, and even life, depends on the intelligent and impartial exercise of judicial authority, the importance of this department of the government must be apparent. To invest ignorant or corrupt men with judicial powers, would be extremely dangerous to the rights of the community. Judges and justices

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§ 93. What is the object of the judicial power? § 94. What courts does the judiciary of a state embrace? In what courts do citizens usually obtain justice? What is the business of the higher courts? § 95. Wherein consists the importance of this department? § 96. For

ought to be men distinguished for their knowledge of the laws, deep discrimination, and sound judgment. They ought also to be persons of inflexible integrity, who cannot be swayed in their decisions, either by motives of fear, or by the prospect of gain.

§ 96. Judges are not elected by the people. Legislative officers, who represent the people in making laws, and executive officers who are to see that they are executed, are properly chosen by the people. They are the people's agents; and the people have a right to elect such as they think will best represent their wishes, and obey their will. These officers have discretionary power. As every particular duty which they will be called upon to perform can not be previously pointed out, they must be left to act, in a great measure, according to their own sense of what is right or wrong, and with a due regard to the supposed interests and wishes of their constituents. Whereas, judicial officers have little or no discretionary power. They are not to be governed by their opinion as to what the law ought to be, but by the law as it is. Since, then, they are not, strictly speaking, the agents or representatives of the people, it can not be important that they be elected by popular suffrage.

§ 97. But there are reasons for not making the judges elective by the people, which are supposed to overbalance any that may be given in favor of their election in this manner. The political actions of men are more or less influenced by the spirit of party; and the prevailing party is sometimes controlled by men of wealth and distinction, who may be tempted to combine their influence to effect the election of favorites or dependants, from whose decisions they may hope to derive some future advantage. It is to be presumed, too, that those who have nothing to hope, but much to fear, from an inflexible administration of justice, would not only feel no interest in, but would actually oppose, the election of upright men. And as men who possess the qualities requisite for this office are seldom the most popular, they would probably too often fail to secure an election by the people.

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what reason are not judges elected by the people? § 97. What direct evils may result from an election of judges in this manner? § 98.

§ 98. There are two principal modes in which judges are appointed in the United States : the one is, by the legislature ; the other, by the senate, on nomination by the governor. The former mode is practised, as is believed, in a small majority of the states. The latter has, however, been adopted in nearly an equal number, and is that which the constitution of the United States provides for the appointment of the judges of the national courts ; they being appointed by the concurrence of the senate in the nomination of the president. The responsibility of making a proper selection, by the latter mode, devolves upon a single individual ; and a sense of this responsibility generally secures the nomination and appointment of good men.

§ 99. The independence of the judges is one of the most essential objects to be kept in view, in the organization of a judicial system. The necessity of this independence arises from the natural weakness of the judiciary. It has been remarked with much apparent truth, that " the executive not only dispenses the honors, but holds the sword of the community : the legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated : the judiciary, on the contrary, has no influence over either the sword or the purse ; no direction either of the strength or of the wealth of the society ; neither FORCE nor WILL, but judgment."

§ 100. Permanency in office is indispensable to the firmness and independence of the judiciary. This principle has been carried into all the constitutions of the states, with but one or two exceptions. Judges of the superior courts generally hold their offices during good behavior, which is in effect for life, or for a long term of years. When judges are firmly seated in office, they cannot be awed by the frowns of power ; and there will be no occasion nor inducement to court popularity, or to resort to any improper means to secure a reappointment to office ; nor for office-seekers to attempt to render them unpopular with a view to supersede or displace them.

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What are the principal modes of appointing judicial officers in the United States ? § 99. What renders the independence of judges essential ? § 100. What tends to secure the independence of a judi-

§ 101. A uniform interpretation of the laws and constitution is an important advantage, which can be secured only by a permanent judiciary. A constant change of judges, differing in their legal opinions, would give rise to conflicting decisions on the same points of law. A decision made one year might be reversed the next; and, as a consequence, the principles of law would be kept in an unsettled state. Long duration of office furnishes the best security against this evil. Another advantage resulting from a long term is, that it enables a judge to acquire that skill in the laws, which is an essential qualification for the judicial office.

§ 102. Judges ought to receive a liberal compensation. This is necessary to ensure the services of the fittest and most learned men, who would not relinquish a lucrative professional business for the duties and responsibilities of a judicial station, without ample reward. This compensation should also be fixed and permanent: for, though it were liberal, men would nevertheless be reluctant to accept the office, if there were not some guaranty against the reduction of the salary. A fixed and liberal support also contributes to the independence of the judges. In view of these advantages, the constitution of the United States provides, that the judges of the national courts "shall at stated times receive for their services a compensation, which shall not be *diminished* during their continuance in office." Every state constitution ought to contain a like provision.

§ 103. But the most judicious organization of the judiciary, and the most careful provisions for the appointment of its officers, have been deemed insufficient to guard the purity of our courts, and to secure a perfect administration of justice. Ignorant and corrupt men will, it is to be presumed, sometimes be promoted to judicial stations. To prevent the mischiefs which may ensue from the continuance of such men in office, some provision is necessary for their removal, in case of misconduct. Such provision becomes the more necessary from the permanent tenure by which

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ciary? What is the ordinary term of office? § 101. What are the advantages of a permanent judiciary? § 102. Why ought judicial officers to receive a liberal and permanent compensation? § 103. What remedy is necessary for the evils resulting from the misconduct



they hold their offices ; as the evils resulting from their unfitness may become intolerable before the expiration of the constitutional term of their appointment.

§ 104. The manner in which the removal of the high judicial and certain other officers may be effected, is either by impeachment, or by address of the legislature to the executive. To effect a removal from office by address to the governor, the legislature states the reasons why the officer ought to be removed. The governor, if he considers the reasons sufficient, makes the removal accordingly : and a new appointment is made in the manner prescribed in the constitution. To prevent a removal upon slight grounds, it is required, in some states, that a majority of two-thirds of the legislature concur in the address ; in others, a simple majority only is necessary. Justice to the accused party requires that he be notified of the intention to remove him, that he may have an opportunity to defend himself.

§ 105. *Impeachment* is a charge or accusation against a public officer for misconduct in the discharge of his official duties. A member of a legislature who should, for a reward, offered or accepted, give his influence or vote in favor of any measure ; or a judge who, from corrupt motives, should give a wrong decision, would be liable to impeachment.

§ 106. The ordinary mode of trial by impeachment, is briefly as follows : Complaint having been made to the house of representatives, the house appoints a committee to inquire into the matter ; and if the charge be well founded, a written accusation is prepared and presented to the senate. The house chooses a number of its members to manage the trial on the part of the house. At the time of trial, the senators take the oath required, and proceed to try the case. The same rules are observed in courts of impeachment as in courts of common law. (§ 229, 230.)

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of judges ? § 104. In what manner may judges be removed ? How is removal by address effected ? § 105. What is impeachment ? § 106. Describe the mode of trial by impeachment.

## CHAPTER XII

*Organization and Powers of Courts of Justice.*

§ 107. THE most common courts of justice are those in the several towns held by *justices of the peace*. Though the duties of a justice are numerous, his powers and jurisdiction are limited to civil causes, in which the sum in controversy does not exceed a certain amount specified in the law, and to the lowest grade of criminal offences. *Jurisdiction* means pronouncing the law. It is composed of *jus* or *juris*, which means law or justice, and *dictio*, speaking or pronouncing. It signifies also the extent to which the powers of an officer or a government may be exercised. A knowledge of the powers and duties of judicial officers may be conveyed to the youthful student, by a general description of the manner in which justice is administered in courts of law.

§ 108. In a civil action in a justice's court, that is, an action for the recovery of damages in money, the justice, at the request of the plaintiff, who is the person bringing the suit, issues a writ or summons, which is a written order signed by the justice, addressed to a constable, commanding him to summon the person against whom the suit is brought, called the defendant, to appear before the justice at the time specified in the summons, to answer to the plea of the plaintiff. The constable serves the summons, by reading or stating its contents to the defendant. At the time specified in the writ, the parties with their witnesses appear before the justice. After having sworn the witnesses to tell the truth, and taken their testimony, the justice enters judgment against the party in default; that is, he records in a book kept for that purpose, usually called a docket, the amount of the debt or damages, together with the costs of suit. The costs consist of the fees to which the justice, constable, and witnesses are entitled for their services.

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§ 107. How far does the jurisdiction of justices of the peace extend? What is jurisdiction? § 108. How is a civil suit commenced in a justice's court? Who is the plaintiff? Who the defendant? Describe

§ 109. If, at the expiration of the time allowed by law for the payment of the judgment, it shall remain unpaid, the justice issues an execution for its collection. An *execution* is a written order of the justice, commanding a constable to collect from the person indebted, the amount of the judgment, and to bring the money to him, the justice, within the time fixed by law. If the money shall not be paid when demanded, the constable may seize the property of the debtor, and sell the same at public auction or vendue, after having given due notice of the time and place of sale. For the benefit of poor and unfortunate debtors, the law very properly provides, that certain articles of property, which are necessary for the convenience of themselves and families, shall not be liable to be taken and sold. The inhuman practice of imprisoning debtors who were unable to pay their debts, has been generally abolished in this country, except in cases in which judgment has been given for some act of trespass or misdemeanor.

§ 110. Prosecutions at law are necessarily attended with expense. This, according to law, and the practice of all courts, is paid by the losing party. And though persons are sometimes subjected to heavy costs, through revengeful and malicious prosecutions, the laws cannot discriminate in such cases; and it would be dangerous to invest a justice with such a power. As every man is entitled to the assistance of the law in obtaining his dues, it would be unjust to compel him to bear the expense of a prosecution, in addition to the trouble and loss of time to which he is necessarily subjected in seeking justice. If magistrates, when applied to for civil processes without good reasons, should endeavor to discourage those who make application, and to effect an amicable settlement of disputes, the expense of lawsuits, as well as the ill-will and revenge which they engender among men, would often be prevented.

§ 111. Justices are, in some of the states, elected by the people as other town officers. It may be a sufficient reason for not having them appointed as the higher judicial officers,

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the trial. What is the judgment? § 109. Describe the manner of collecting a judgment. § 110. Why ought the costs of a suit to be paid by the losing party? § 111. How are justices of the peace

that the central appointing power of the state cannot be sufficiently acquainted with the citizens of every town in a large state to make discreet selections ; and as those making the appointment must rely in a great measure on the recommendations of others, they may, through misinformation, bestow the office upon improper persons.

§ 112. There is also a court in every county, the judges of which are appointed, either by the legislature, or by the governor and senate, for a term of years, or during good behavior. It is generally called the *court of common pleas*. In courts of this kind are tried civil cases in which the sum in controversy is beyond the jurisdiction of a justice's court. They also try causes referred to them by appeal from justices' courts. Their jurisdiction extends, in criminal cases, to the trial of offences punishable by fine or imprisonment in the county jail. These courts, from the superior ability of the judges, are presumed to be less likely to err in their decisions. Hence cases in which a large amount of property, or men's liberty, is concerned, are with propriety submitted to these courts for adjudication.

§ 113. There is in every county a sheriff, elected by the people of the county, whose duties, as an officer of a county court, are similar to those of a constable in a justice's court. *County* is the name given in England to the districts or territories that were under the government of counts or earls. They are also called *shires*. Officers were appointed in these shires to do certain acts in them; and were called *sheriffs*. Hence the name of sheriff is applied to the officer who is intrusted with the execution of the laws in each county. The duties of a sheriff and constable are in their nature executive.

§ 114. There is also, in every state, a court, generally called the *supreme court*, or supreme judicial court. It is composed of judges eminent for their abilities and knowledge of the laws. In most of the states it possesses the highest judicial power, and is the last to which appeals may be made from the lower courts. The judges of the supreme court

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appointed? § 112. How are county courts constituted? What causes are tried in these courts? § 113. What are the duties of a sheriff? How did the names of county and sheriff originate? § 114. How is

are appointed either by the executive and senate, or by the legislature, for a term of years, or during good behavior.

§ 115. Courts for the trial of persons charged with crimes punishable by imprisonment in the state prison and by death, are differently constituted. They are sometimes called *courts of oyer and terminer*. They are held in the county in which the crime has been committed, by a judge of the supreme court, or of some other court higher than a county court, who goes once a year, or oftener, into the several counties of the state, for the purpose of trying criminals. The judges of the county court in the county in which the court is held, are associated with him in holding this court.

§ 116. There are also *courts of equity* or *chancery*; but it is believed a court of this kind, separately and distinctly organized, does not exist in any state except New-York. Chancery powers are usually exercised by judges of the supreme court. The intention of instituting this court originally was, to afford that relief which equity requires, but which cannot be had in courts of common law. For instance, a person, having contracted to sell a piece of land, refuses to fulfil or execute the contract. The purchaser may, in a court of law, obtain damages of the seller for the non-fulfilment of the contract; but he cannot oblige him to execute it. To compel its performance, an order or decree of the court of chancery is requisite: and if the vendor will not execute a deed of conveyance, it may be done by a person authorized by law.

§ 117. This court, by injunction, prohibits persons from doing acts that are against equity. A judgment debtor may be restrained from disposing of his property; banks may be stopped from doing farther business in case of supposed insolvency or unfairness in their operations; proceedings in law may be stayed; persons may be restrained from committing wastes or injury on lands; and many other like restraints may be imposed, and protection afforded, by injunction.

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a supreme court constituted? § 115. What are courts of oyer and terminer? How constituted? § 116. What is the intention of the institution of courts of equity or chancery? Give an example to illustrate its objects and powers. § 117. What acts does it prohibit?

§ 118. A trial in a court of equity is, both in its beginning and progress, different from a trial in courts of common law. The plaintiff commences his suit by a complaint in writing to the court, which is called *filing a bill* in chancery. The court issues a process commanding the defendant to appear before the court on a certain day, to answer to the complaint. The answer also is in writing, and sworn to by the defendant. Witnesses, if there be any, are examined on both sides; but if there be none, the court decides upon the evidence of the parties themselves, who are always on oath. If the defendant does not appear to answer to the complaint, the decree of the court is made upon the facts set forth in the complainant's bill.

§ 119. *Courts of probate*, of which there is one in each county, are instituted to prove the genuineness and validity of wills, and to dispose of and settle the estates of persons dying without a will. *Probate*, from the Latin, means proof. Hence its use in expressing the right or jurisdiction of proving wills. A probate court is held by a judge called judge of probate. In the state of New-York, this officer is called *surrogate*, originally signifying the deputy of an ecclesiastical judge or bishop. In England the bishops had the right to settle the estates of persons deceased.

## CHAPTER XIII.

### *Institution of Juries.*

§ 120. THE courts of law in the United States, as it regards their jurisdiction, as well as the principles of their organization, appear to be well adapted to ensure a correct and impartial administration of justice. The best judges, however, are fallible men, liable to err in judgment, or to be biased in their decisions. Hence, an additional safe-

§ 118. Describe the commencement and progress of a trial in this court

§ 119. What are probate courts? Define probate and surrogate.

§ 120. What is the object of juries? § 121. How is a jury consti-

guard to the liberties and rights of citizens has been provided in the institution of *juries*.

§ 121. A *jury* is a body of men who sit on a trial, and who are sworn to deliver the truth upon the evidence given them touching the matter in question. The declaring of this truth is called, bringing in a verdict. *Verdict*, from the Latin words *vere*, true, and *dictum*, saying, means a true saying. A jury usually consists of twelve men. In civil cases before a justice of the peace, a jury, in some states at least, is composed of only six men. All the jurors must agree in a verdict, or the case is not decided. The jury which, in courts of record, tries issues of fact, is called a *petit jury*, in contradistinction to grand juries of the same courts.

§ 122. By the constitution of the United States, the right of trial by jury is guarantied to every citizen in suits at law, in which the sum in controversy exceeds twenty dollars. And as this constitution is the supreme law of the land, all the state constitutions must of necessity conform to it. No person is obliged to submit a question involving the right of property to any considerable amount, to the decision of judges in whose ability or integrity he has not full confidence. This provision in the national constitution, securing this right in all cases wherein the sum exceeds twenty dollars, does not prohibit a state from granting the privilege when the sum is of less amount. In many, perhaps a majority of the states, a jury is allowed to either party requesting it, however small the sum in dispute may be.

§ 123. In the more important cases in which the liberties and lives of citizens are concerned, besides the security to the rights of persons afforded by the right of *trial* by jury, additional protection to innocence is provided by the institution of *grand juries*. As a person might, upon a false accusation, be imprisoned to await a trial, and thus be unjustly deprived of his liberty for a long time, it has been made the supreme law of the land, that no person shall be held to answer for a capital or other infamous crime, unless on a presentment or indictment of a grand jury. An *indictment*

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tuted? What means verdict? § 122. How is the right of trial by jury secured? To what extent? § 123. Why are grand juries neces-

is a written accusation of a crime, made by a grand jury under oath to a court.

§ 124. A grand jury consists of not less than twelve nor more than twenty-three men, who attend the sittings of court, to inquire into complaints against persons accused of crimes. They are sworn by a judge of the court to make a true presentment of all matters that may be submitted to them. They repair to a separate apartment, where they inquire into the truth of the complaints that are brought before them. If, from the testimony of witnesses, it shall appear to them that a person complained of is guilty of the crime alleged against him, they declare that he ought to be tried. If twelve of the jurors unite in this declaration, an indictment is drawn up, signed by the foreman of the jury, and carried by the jury into court. The accused may then be arrested, and put on trial.

§ 125. A proper mode of obtaining juries in courts of record, and which is practised to some extent, is the following:—The proper authority in each town makes a list of persons residing therein, who shall be of approved integrity, of sound judgment, and well informed; and transmits the same to the clerk of the county. The clerk, before the holding of every court, draws the names (previously written on slips of paper, and put into a box) of a sufficient number of persons to serve as jurors, who are summoned by the sheriff to attend the sitting of the court.

§ 126. But while justice is thus secured to the innocent, provision has, with equal propriety, been made for ensuring the punishment of the guilty. If offenders were allowed to go at large until they could be indicted by a grand jury, they might, in most cases, escape from justice. Any person, therefore, having knowledge of any crime, may immediately make complaint, on oath, to a justice of the peace, who thereupon issues a warrant for the apprehension of the offender. If, upon due examination before the justice, the charge appears to be well founded, the justice may order the accused to be committed to the jail of the county for safe keeping,

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sary? What is an indictment? § 124. Of what number does a grand jury consist? Describe the proceedings of a grand jury. § 125. How are jurors selected and obtained? § 126. In what manner are offend-



until, at the next sitting of the court, complaint may be made to the grand jury.

§ 127. The party accused may, however, be set at liberty, by giving bail for his appearance before the court at its next session. *Bail* is a word derived from a French word, signifying to deliver. As here used, it means the security given by the party restrained, by means of which he is delivered into the hands of those that bind themselves for his forthcoming. He gives a writing called a bond, with one or more persons as sureties, who bind themselves for his appearance in court. He is then bailed or delivered to his sureties as keepers, and set at liberty. The sureties may, whenever they shall deem it necessary for their own security, cause him to be taken, and committed to jail for safe keeping until the day of trial. In default of his appearance at court, the sureties become liable to pay the sum specified in the bond.

## CHAPTER XIV.

### *Taxation.—Direct and Indirect Taxes.*

§ 128. It is evident that much expense is incurred by every government in carrying on its operations. It is not to be expected that men will leave their private business to serve the public without an adequate reward. Provision must be made for the compensation of all the officers of the general administration of the state. These are members of the legislature; the governor and other executive state officers; the judges and other officers of the state courts; besides numerous clerks and other persons appointed to assist in the several departments of the government.

§ 129. Secondly, county expenses. These are made up, chiefly, of the fees of the judges and other officers of the

ers apprehended to secure their trial? § 127. What is the meaning of bail? Describe the process of executing bail.

§ 128. Why is taxation necessary? What state officers are paid out of the treasury? § 129. What expenses accrue in the several

county courts, and of all other persons who transact business for the county; the costs of all criminal prosecutions in the county; including the compensation of grand and petit jurors; the cost of the court-house, jail, and other necessary county buildings; and the expense of supporting the poor of the county, where provision is not made for their support in the several towns.

§ 130. The affairs of each town also require the services of a considerable number of officers. There are one or more persons who have a general supervision over the affairs of the town; a clerk to keep the records of the town; a board of assessors to take the valuation of the property or estates of the inhabitants; commissioners to lay out and superintend the repairing of roads and bridges; persons whose duty it is to provide for the support of the poor; commissioners to transact business relating to schools; a collector of taxes; together with the necessary number of justices and constables.

§ 131. A government must then, of necessity, possess the power of providing the means of its support. This power is the power of taxation. A *tax* is a rate or sum of money assessed upon the property of a citizen by government for the use of the state or nation. A tax is sometimes laid upon the *person* of a citizen. This is called a capitation or poll tax. *Poll* means head. *Capitation* signifies the enumeration of heads or persons. Hence the use of the term capitation tax. Both these kinds of taxes are called *direct taxes*, because they are laid directly upon the property and person of the citizen.

§ 132. The justice of poll taxes has been much questioned; and they are imposed in this country to a very limited extent. It is only in extraordinary emergencies that the levying of these taxes can be justified. The general rule, and that which appears to be the most equitable, is to assess taxes upon the citizens according to their respective abilities or means of contributing. They ought therefore to be laid upon the property possessed or used by individuals; and to

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counties? § 130. What in the several towns? § 131. What is a tax? A capitation tax? Why are these called direct taxes? § 132. Which of these kinds of taxes is most equitable? § 133. Illustrate by ex.

be equal, they must be imposed according to the actual value of the property to be assessed.

§ 133. A proper mode of distributing and apportioning the amount to be raised by taxation, may be supposed to be as follows: The sum to be collected for paying the expenses of the general administration of the state, and to be paid into the state treasury, is apportioned among the several counties in proportion to the amount of taxable property in each. To the sum so charged to each county, are added the county expenses for the year. This amount is divided among the several towns in the county in proportion to the value of the taxable property in each town. To each town's quota of the sum thus apportioned is added the expense of each town for the year. The amount of these constitutes the sum total of taxes to be collected therein. Taxes are collected in each town by a person elected for that purpose, and paid by the collector to the treasurer of the county, by whom the money is paid to all persons having claims on the treasury.

§ 134. Many state treasuries are supplied, in whole or in part, by the interest or income of the property or funds of the state set apart for this purpose. Canals and rail-roads made by the state, are the property of the state; and the tolls collected from these public works often constitute a large portion of its revenue. *Revenue* is the annual rents, profits, or interest of the public property, and taxes, received into the treasury for the use of the state. Revenue is also the produce of duties, imposts, customs, and excises, which a nation or state collects for public use. The power, however, to lay and collect these belongs principally to the national government; and the revenue accruing from this source goes into the national treasury, and is used for national purposes.

§ 135. Duties, imposts, and excises, are called *indirect taxes*, because they are not laid directly upon the citizen, in proportion to the amount of property he possesses; they merely affect the expense of the goods which he purchases for his use or consumption. They are laid, for the most

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ample the proper mode of laying and collecting taxes? § 134. By what means are state treasuries sometimes partially supplied? What is revenue? § 135. Why are duties, imposts, and excises called in-

part, upon goods imported; that is, goods brought from a foreign country. The effect of an indirect tax upon the consumer may be thus illustrated:

Government, wishing to increase the revenue, lays a duty or tax of ten cents a pound on tea imported. The amount of this duty, though advanced by the importer, is paid to him again by the retail merchant, to whom again it is repaid by the consumer, in the augmented price of the article. But though this tax falls in the end on the consumer, he may avoid paying it by giving up the use of the article taxed.

§ 136. Duties, imposts, and excises, though they are all comprehended in the term, indirect taxes, are words somewhat different in their signification. *Duties* or *customs* are taxes levied upon goods imported or exported. The word *imposts* does not properly apply to goods exported, but only to those which are imported. *Excise* generally means an inland duty on commodities sold or consumed. Thus the tax paid by the retailer of distilled liquors is called an excise tax. As the power of indirect taxation is, by the constitution of the United States, vested principally in the general government, the nature of duties, and the mode of collecting them, are more appropriate subjects for consideration in another part of this work. (§ 265-281.)

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direct taxes? Illustrate the operation of duties, by an example.  
§ 136. Give a definition of the terms, duties, imposts, and excises.

## PART SECOND.

### GOVERNMENT OF THE UNITED STATES.

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#### CHAPTER I.

##### *Settlement and Government of the Colonies.*

§ 137. A BRIEF history of the settlement and political institutions of the American colonies is deemed useful in this place, especially to young persons. A recital of the sacrifices which were made to establish the independence of these states, cannot fail to inspire youth with sentiments of genuine patriotism; and a knowledge of the government of the colonies, and of the changes effected in them from time to time, will enable them the better to understand the nature and objects of the constitution.

§ 138. In 1492, America was discovered by Christopher Columbus; an expedition having been fitted out for that purpose by the Spanish government, at his earnest solicitations. His discovery, however, was confined to the West Indies. The English were the people that first discovered the continent of America. This discovery was made in the year 1497, by Giovanni Cabot and his son Sebastian, who were commissioned by Henry VII. to sail in quest of new countries.

§ 139. Of the thirteen colonies whose delegates signed the Declaration of Independence, all but Georgia were settled in the seventeenth century. A *colony* is a settlement of persons in a distant place, who remain subject to the government of the parent country. With few exceptions, the colonists were Englishmen. The settlements were chiefly

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EXERCISES.—§ 138. When, and by whom, was America discovered?  
§ 139. When were the thirteen colonies settled? By what people?

made at a time of great political excitement in the parent country, caused by encroachments of the crown upon the liberties of the people. Multitudes annually fled hither to find a refuge from oppression. Also the attempt on the part of the government, to enforce conformity to the established church, brought many to this country, where they might enjoy freedom of conscience in matters of religion.

§ 140. In 1606, two companies of merchants and others were incorporated under the names of the *London company* and the *Plymouth company*, with the exclusive right of settling and trading within their respective limits. In 1607, the London company sent to Virginia a colony of 100 men, which, in consequence of war with the natives, scarcity of food, and disease, was reduced in a few months to 38. In October, 1609, the number had been increased by new colonists to 500; but a famine reduced them in about six months to 60. In 1613, the land which had before been held in common, was distributed to each individual.

§ 141. If it should be asked, by what right the nations of the eastern continent took possession of the lands in this country, it may be answered, by the same right as that by which a nation of some remote part of the globe, having no knowledge of the United States, should assert its claim to the soil of this country on making a discovery of it. The nations of Europe founded their claim on the right of discovery; a right which the present proprietors of the American soil would not readily concede to any other people claiming it on the same grounds.

§ 142. The supreme government of the colonies, on their first establishment, was vested in a council residing in England, and was nominated by the king; the subordinate jurisdiction, in a council which was to reside in America, also to be named by the king, and to act in conformity to his instructions. This charter being found inconvenient, a new one was granted by James, enlarging the colony, abolishing the council in Virginia, and vesting the government in one residing in London.

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What is a *colony*? § 140. At what time was the first colony planted; and where? By what company? § 141. On what ground was the soil claimed by the Europeans? § 142. In what bodies was the gov

§ 143. In 1619, a great change was effected in the government of the colony. A general assembly, the first that was held in Virginia, was called by the governor. Eleven boroughs sent representatives to the convention. The supreme authority was divided between the governor, a council of state appointed by the company in England, and a general assembly elected by the people with the power to enact laws. In 1624, the displeasure of king James having been excited by the change that had been made in the government of the colony, the charter was declared forfeit, and the company dissolved.

§ 144. The Plymouth company, which had the exclusive right to trade and settle in North Virginia, did nothing effectual towards colonizing their territory, extending from the 38th to the 45th degrees of north latitude. But in 1620, a number of Puritans embarked on a voyage with a design of settlement on the Hudson. But by accident, as some suppose, they were landed at Cape Cod, within the limits of the Plymouth company: or, as is generally believed, by the treachery of the Dutch, who themselves contemplated settling on the Hudson, they were, against their intention, compelled to land on the shores of Cape Cod. *Puritans* was a name given to those who dissented from the established church, because they wished for a purer form of discipline and worship, as many of the ancient forms and ceremonies of the Romish church were still continued.

§ 145. Not having contemplated any plantation at this place, they had not obtained any charter from the company. Destitute of any right to the soil, and without any powers of government, on the 11th of November, before they landed, they drew up and signed a compact, in which, after acknowledging themselves to be subjects of the crown of England, they declared as follows:

§ 146. "Having undertaken, for the glory of God, and the advancement of the Christian faith, and the honor of our king and country, a voyage to plant the first colony in

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ernment of the colonies vested, on their first establishment? § 143. What changes took place in 1619 and 1624? § 144. Where, and in what year, did the Plymouth company make their first settlement? What is the meaning of *Puritans*? § 145. At what season of the year did they land? § 146. What is the nature of the form of govern-

the northern parts of Virginia, we do, by these presents, solemnly and mutually, in the presence of God and of one another, covenant and combine ourselves together into a civil body politic, for our better ordering and preservation, and furtherance of the ends aforesaid; and by virtue hereof do enact, constitute and frame such just and equal laws, ordinances, acts, constitutions, and offices, from time to time, as shall be thought most meet and convenient for the general good of the colony; unto which we promise all due submission and obedience." This was the earliest American constitution, and was signed by 41 persons. It was in substance a pure democracy.

§ 147. The company, including women and children, amounted to 101. They proceeded to examine the coast, and finally determined to settle in a place called New Plymouth. Exhausted by the fatigues of the sea, and suffering from a want of suitable provisions and shelter, nearly one half of their number died within four months after their landing. They continued for ten years to hold their goods and property in common, when they obtained from the company a grant of the land, which they had before held only by occupancy. At this time their number did not exceed three hundred. For many years they continued a mere voluntary association, governed by laws and magistrates formed and chosen by themselves, until they were incorporated with Massachusetts, in 1692.

§ 148. In 1628, the Massachusetts colony was settled by a company incorporated by royal charter, the land having been previously purchased from the Plymouth company. In 1630, the government of the colony was transferred to Massachusetts, by a vote of the company. A few years later, the freemen adopted the plan of acting by delegates or representatives, and the charter of a trading company was converted into the constitution of a commonwealth. This unauthorized assumption of power, as well as their religious principles, rendered the Puritans obnoxious to the court party at home, and led the Plymouth company to re-

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ment which they drew up before they landed? § 147. At what place did they settle? How were they governed? How long? § 148. When was the Massachusetts colony settled? How was it governed?



sign their charter to the king; and Massachusetts, like Virginia, was taken into royal hands.

§ 149. But such was the disturbed state of England, that these distant and insignificant colonies attracted little notice, and were left to grow up in habits of self-government, their numbers at the same time increasing by such as were unsuccessful in the civil strifes at home. The persecuted Puritans fled to New England, the Catholics to Maryland, and the defeated royalists to Virginia.

§ 150. New York was settled by the Dutch, in 1614, and was held by them fifty years. It was, however, claimed by England, having been discovered by Henry Hudson, in 1608, who entered the bay of New York, and sailed up the river to latitude 43 degrees north. He did not attempt to land and form a settlement, contenting himself with claiming the country for his sovereign, James I., by right of discovery. The English asserted that Hudson was employed by their government, and that he sold the country to the Dutch without authority. The Dutch maintained that he was in the service of the Dutch East India company at the time; and they made their settlements without interruption for many years. In 1664, the colony was occupied by the English; and the territory now comprising New York, New Jersey, Pennsylvania, Delaware, and a part of Connecticut, was granted by Charles II. to his brother, the duke of York.

§ 151. New Jersey was settled by the Dutch, in 1624, and occupied by the English in 1664. New Hampshire was first settled in 1623, at Andover and Portsmouth. Delaware was settled by the Dutch in 1627, and occupied by the English in 1664. Some Swedes settled here in 1638, but they were conquered by the Dutch, and most of them left the country. Maine was settled in 1630, and united with Massachusetts in 1677. Maryland was settled in 1633, and was the first colony that was governed directly as a province of the British empire. Its founder was Sir George

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§ 149. What effect had the disturbed state of England upon the colonies? § 150. By whom, and when, was New York settled? By whom, and on what ground was it claimed? When was it occupied by the English? § 151. When was New Jersey settled? New Hampshire? Delaware? Maine? Maryland? Rhode Island? Connecticut? North and South Carolina? Pennsylvania? Georgia?

Calvert, a Roman catholic nobleman. Rhode Island was settled in 1636. Connecticut was settled from Massachusetts in 1632. New Haven, settled in 1637, was united with Connecticut in 1662. North and South Carolina were settled about the year 1660. Pennsylvania was founded as a colony by William Penn in 1681. Georgia was settled in 1732.

§ 152. Of the forms of government which prevailed in the colonies, there were three; the charter, the royal or provincial, and the proprietary governments. The *charter* governments were those of New England. These charters, or grants of the crown, conferred on the colonists, not only a right to the soil, but also the privileges of natural-born subjects. They elected their own governors and legislative assemblies, and established courts of justice; and in some points even exceeded the powers conferred by the charters. The only limitation to their legislative power was, that their laws should not be contrary to those of England. The crown claimed the right to revoke these charters; but the colonists maintained that they were solemn compacts, and that they could not be revoked without cause. The charters were sometimes declared forfeited, or forcibly taken away, and the disputes to which this question gave rise, between the mother country and the charter governments, constituted one of the causes of the revolution.

§ 153. The *royal* governments were those of Virginia, New York, and, at a later period, the Carolinas, (1728;) and the Jerseys, (1702.) In these colonies, the governor and council were appointed by the crown, and the representatives to the colonial assemblies were chosen by the colonists. The governor obeyed the instructions of the crown, and had a negative power on the proceedings of the legislature, which was composed of the council and assemblies. The judges and most of the officers were also appointed by the king, although in many cases paid by the colony. The arbitrary acts of the governors, and the royal claim to an absolute veto on the acts of the assemblies, became sources of much discontent, as the exercise of these

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§ 152. What forms of government prevailed in the colonies? What were the *charter* governments? Describe them. § 153. Where were

powers was virtually taking from the people the right to participate in the government.

§ 154. The *proprietary* governments were those of Maryland, Pennsylvania, Delaware, and, at first, those of the Carolinas and the Jerseys. These colonies were in the hands of proprietors, or individuals to whom grants of land had been made by the crown, with authority to establish civil governments and make laws, under certain restrictions. The proprietors appointed the governor; and they had power to repeal or negative the acts of the assemblies: and the exercise of this power was a source of continual quarrels between the people and the proprietors.

§ 155. In 1719, the people of Carolina took the government into their own hands. The governor, council, and assembly, were all elected by the people. A declaration of independence was published, setting forth the causes of their renouncing the former government, and signed by all the members of the new government. The oldest laws of the Virginia assembly, (1624,) comprise a declaration defining the power of the governor and the assembly, and asserting the privileges of the people in regard to taxes and personal services.

§ 156. At an early period in the existence of the New England colonies, (1643,) a confederation was formed between them for mutual offence and defence, leaving to each colony its own government, while the common affairs of the confederacy were managed by a congress, consisting of two commissioners from each colony.

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the *royal* governments? Describe them. § 154. Where were the *proprietary* governments? Describe them. § 155, 156. What occurrences took place in the years 1719, 1624, and 1643?

## CHAPTER II.

*Causes of the Revolution—Independence declared—Confederation—Adoption of the Constitution.*

§ 157. As early as the seventeenth century, the question of taxation became a subject of common interest in the colonies. The colonists disputed the right of parliament to tax the colonies. It was believed that the power of the British government extended only to the regulation of trade. Having surmounted the hardships and difficulties which attended their first establishment, and having made considerable advances in commerce and manufactures, the freedom of commerce which they had so long enjoyed began to be interrupted. Their trade was restricted by the imposition of unjust taxes for the benefit of the mother country.

§ 158. By the act of 1651, none but British or colonial vessels were allowed to participate in the export and import trade. Another act, passed in 1660, enacted that certain articles should not be exported directly from the colonies to any foreign country; thus compelling the colonists to sell their produce in no other than British markets. It was next provided, (in 1663,) that they should buy such foreign articles as they needed entirely of the merchants and manufacturers of England. Duties were even imposed on certain colonial products transported from one colony to another.

§ 159. All attempts to manufacture such articles as the mother country could provide, were discouraged. In 1699, it was enacted, that no wool, yarn, or woollen manufactures, should be exported from the American colonies; and in 1750, every slitting or rolling mill, plating forge to work with a tilt hammer, or other machinery, was declared to be a common nuisance, which the governors were directed to cause to be abated. It is true, however, that many of these and similar acts of parliament were openly disobeyed or se-

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§ 157. What important question arose in the seventeenth century?

§ 158. What were the objects and effects of the respective acts of 1651, 1660, and 1663? § 159. What was the object of the act of 1699? What occurred in 1750? § 160. Were measures taken to

cretly evaded, being considered by the colonists as violations of their rights.

§ 160. Measures were at length taken by the ministry, not only to enforce such acts, but to raise a revenue in America by internal taxation. In 1765, the obnoxious stamp act was passed, by which obligations in writing in daily use were to be null and void, unless they were executed on a paper or parchment stamped with a specific duty. Newspapers, almanacs, and pamphlets, printed in America, were to be made to contribute to the British treasury. About the same time, a bill was brought in authorizing the quartering of troops in the colonies.

§ 161. As might have been expected, the colonists were unwilling to submit to these acts and measures. A general congress, the first of the kind, was held at New York, which adopted a declaration of rights and grievances, asserting taxation by themselves, and trial by jury, to be inherent rights of British subjects in the colonies. The colonial assemblies adopted similar measures; meetings of the people were held; and the whole country was set in a flame.

§ 162. So violent was the opposition to the stamp act, that on the first of November, the day on which the act was to have taken effect, neither stamps nor officers were to be found! In this state of affairs, the act was repealed, (March, 1766.) At the same time, by a declaratory act, parliament asserted the right to bind the colonies in all cases whatsoever. In 1767, a bill was passed imposing a duty on glass, paper, paints, and tea, imported into the colonies; and troops were quartered in Boston to enforce obedience.

§ 163. But combinations having been formed by the Americans against the importation of these articles, the act was repealed, March, 1770, the duty on tea alone being continued. Accordingly the colonists renounced the use of that article, or obtained it from other countries: in consequence of which, an act was passed in 1773, allowing a drawback

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enforce these acts? What act was passed in 1765? § 161. How did the colonists regard these acts? Where was the first congress held? What measure was adopted? § 162. When was the stamp act repealed? What did parliament declare at the same time? What bill was passed in 1767? § 163. What caused the repeal of this act?

on tea exported to America, for the purpose of rendering it cheaper, and inducing the Americans to submit to the small duty imposed upon it. Large shipments of tea were accordingly made ; but in New York and Philadelphia the vessels were not allowed to land their cargoes ; in Charleston it was stored, but not permitted to be offered for sale ; and in Boston, after several unsuccessful attempts to prevent its being landed, a party of men, disguised as Indians, boarded the tea ships, and threw the tea overboard. This occurred December 16, 1773.

§ 164. In the following spring, by an act of parliament, called the Boston port bill, passed March 17, 1774, the port of Boston was closed, and the landing and shipping of goods were ordered to be discontinued. The custom-house and trade, and the session of the court, were removed to Salem, and the charter altered, taking the whole executive government from the people, and vesting the appointment of the important officers in the crown. It was also enacted, that a person indicted for a capital offence, committed in aiding the magistrates, might be sent to Great Britain for trial. In the same year, general Gage, the British commander-in-chief, and governor of Massachusetts, arrived in Boston to enforce the Bostonians into a compliance to the oppressive acts of parliament.

§ 165. In this crisis, the other colonies made common cause with Massachusetts. Deputies from most of the colonies met in congress at Philadelphia, September 5, 1774. Congress published a declaration of rights, protesting against the right of Great Britain to tax the colonies, or to interfere in their internal policy ; with a statement of grievances, declaring the late acts of parliament to be violations of the rights of the colonists. They next proceeded to interrupt all commercial intercourse with Great Britain, pledging themselves not to import or use British goods till the acts complained of should be repealed. Addresses, petitions, and remonstrances were resorted to, but all to no effect. Instead of changing its policy, the British government

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What is related concerning the article of tea ? § 164. What bill was passed March 17, 1774 ? What else occurred the same year ? § 165. What action on the part of congress and the people did these measures

imposed additional restrictions upon the trade of the colonies.

§ 166. Preparations now began to be made for resistance. Gunpowder was manufactured, the militia was trained, and military stores were collected. In April, 1775, a detachment of troops was sent to destroy the military stores collected at Concord. At Lexington, the militia were collected to oppose the incursion of the British forces. They were fired upon by the British troops, and eight men were killed. After having proceeded to Concord, and destroyed a few military stores, the troops returned, and were pursued by the Americans to Boston. Here was spilled the first blood in the war which severed the American colonies from Great Britain.

§ 167. In May, 1775, a second congress met from all the states, and immediately determined to organize an army; and Washington was appointed, June 15, commander-in-chief of the colonial forces. Congress authorized the emission of two millions of dollars in bills of credit, for the redemption of which the colonies were pledged; and an apportionment was made of the quota to be paid by each colony of the bills emitted. A general post-office was established; and rules were framed for the government of the army. Congress also published a solemn declaration of the causes of taking up arms, an address to the king, entreating a change of measures, and an address to the people of Great Britain, requesting their aid, and admonishing them of the threatening evils of a separation.

§ 168. At the next meeting of the same congress, rules were adopted for the regulation of the navy; a farther emission of bills was authorized; and a treasury department was established. A general system of measures for resistance was now adopted throughout the colonies. General Washington had been at Cambridge at the head of the army, whose term of service expired with the year 1775, without ammunition, and but imperfectly supplied with arms.

§ 169. By the beginning of March, 1776, 14,000 regular

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produce? § 166. What memorable event took place in April, 1775?

§ 167. When did the second congress meet? What measures did it adopt? § 168. What measures were adopted at the next meeting

troops had been enlisted, and the British were obliged to evacuate Boston, March 13. On the 10th of June, a committee was appointed by congress to prepare a declaration, "that these colonies are, and of right ought to be, free and independent states." On the 11th of June, a committee was appointed to prepare a form of confederation between the colonies. On the 2d day of July, congress adopted the resolution of independence; and on the 4th of July, they adopted the DECLARATION OF INDEPENDENCE.

§ 170. Congress consisted of delegates from thirteen independent states, with little more authority than that of advising the states to adopt certain measures. Money could not be raised without the consent of the states, which were held together by the force of circumstances, congress having no power to enforce obedience. But during the heat of the revolutionary contest, men were little disposed to discuss or scrutinize such subjects; and the people confided in the wisdom of congress, and yielded to its authority.

§ 171. But in order to give stability to the union, and to define more precisely the nature of the federal compact and the powers of congress, *articles of confederation* were agreed on by congress, November 15, 1777, and submitted to the state legislatures for approval and ratification. The articles bear date July 9, 1778: they were ratified the same year by all the states except Delaware and Maryland; by the former, in 1779; by the latter, the first of March, 1781, being nearly five years after the first action on the subject by congress. By these articles, the exclusive control of our foreign relations, the right to declare war and make peace, and the right to make requisitions of men and money, were confided to congress.

§ 172. But the confederation was in many respects defective. It did not possess the power to carry its own constitutional measures into effect; for, like all mere confederations, the decrees of the federal government operated upon the states in their independent capacity, and not upon indi-

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of congress? § 169. What important events occurred in 1776? § 170. What is said of the authority of congress prior to the confederation? § 171. For what purpose, and when, were the articles of confederation adopted? § 172. Wherein consisted the defects of the



vidual citizens. But perhaps the greatest defect was the want of power to provide for defraying the expenses of the government. Congress had the power to ascertain the sums necessary to be raised for the service of the United States, and to apportion the quota to each state: but as the power was reserved to the states to lay the taxes, and prescribe the time and manner of payment, it depended upon the good will of each of the legislatures of the thirteen independent states, whether any measure of defence could be carried into operation. And, when danger from abroad was past, this confederacy was found to be incompetent to govern the country.

§ 173. The revolutionary contest was ended by the surrender of Cornwallis, at Yorktown, to the combined American and French forces under Washington and Rochambeau. In the following year, a treaty was concluded between Holland and the United States; and after long protracted negotiations, a treaty of peace was signed September 23, 1783, by which Great Britain acknowledged the independence of the United States of America.

§ 174. The war was attended with great sacrifices. Without arms or pecuniary resources, congress was obliged to have recourse to a paper medium. During the first five years of the war, three hundred millions of dollars, in bills of credit, had been emitted; and no provisions were made for redeeming them, the states neglecting, or but partially complying with, the requisitions of congress. In 1780, these bills had so depreciated in value as to cease to circulate; the treasury was empty, the army unpaid, without clothing, and sometimes without food.

§ 175. Partial relief was at this critical period afforded to the United States by grants and loans obtained from France and Holland. The whole amount received from these nations during the war amounted to nearly ten millions of dollars. When peace took place, the public debt amounted to \$42,000,000, on which congress was unable to pay even the interest. The requisitions and regulations of

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confederation? § 173. When was the contest ended? When was a treaty of peace effected? § 174. What was the state of the currency during the war? § 175. Whence was relief obtained? What

that body were but little regarded by the states, and the country was fast approaching to a state of anarchy.

§ 176. A change in the government now became necessary, as the only means likely to preserve the union. In February, 1787, congress passed a resolution calling a general convention of commissioners from the several states, to meet in Philadelphia in May, to revise and amend the articles of confederation. Delegates were accordingly appointed by all the states except Rhode Island. The convention assembled on the 25th of May; and, after a long and laborious session, and many compromises of interest and opinion, agreed upon the present constitution, which subsequently received the sanction of all the states of the union; and the new government commenced proceedings under it on the 4th of March, 1789. (§ 560.)

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### CHAPTER III.

#### *Nature and Objects of the Union under the Constitution.*

§ 177. "WE the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America."—*Preamble to the Constitution.*

§ 178. The union under the confederation, as has been observed, had been found to be very imperfect. The states had severally entered, as expressed in one of the articles, "into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare." But as it was a mere league

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was the state of the country at the close of the war? § 176. When was the constitution framed and adopted?

§ 177. What objects were intended to be accomplished by the constitution? § 178. State briefly the nature of the confederation.

or treaty of alliance, "each state retaining its sovereignty, freedom, and independence," its binding force depended on the good faith of each of the states. Each party was its own judge of the meaning of the contract, and how far it was bound by it. If, therefore, this contract had been broken by either of the parties, remedy could be had only by resorting to the law of force, which, according to the law of nations, is to decide matters of difference between sovereign states.

§ 179. Hence it appears that the union was merely a federal, not a national union. The word *federal*, is from the Latin, *fædus*, which signifies league or contract. The union was not a national union. The people of the several states were not citizens of the United States, but of their respective states; and as such, they owed obedience to their respective state governments, and not to the federal government. This government was destitute of executive and judicial powers, which are necessary in giving to a government a national character, as well as in rendering it strong and efficient. It had only a legislative power, and this was limited to a few objects.

§ 180. The nature of the union under the present constitution, is briefly expressed in the preamble: "We the people of the United States, in order to form a more *perfect union*, do ordain and establish this constitution." The confederation was a union between the states. The *states* were parties to the contract. But the constitution was adopted by the *people* of the United States: not, however, in the capacity of an aggregate political community, but by their representatives in state conventions, acting separately for themselves and for their respective communities. It was ratified by the people of each state, in concurrence with the people of all the states, and thus became a mutual contract between all, and operating upon each citizen individually.

§ 181. The character of the present union may be learned, farther, from the design of the framers of the constitution. It was stated in the convention, at the beginning of its session, that it was intended to form a more energetic

§ 179. What is *federal*? Of what essential powers was the confederation destitute? § 180. In what respect is the union under the constitution different from the former? § 181, 182. What evidence is

government ; and a resolution was adopted, declaring " that a *national* government ought to be established, consisting of a supreme judicial, legislative, and executive." And in reporting to congress the result of their labors, the framers say : " In all our deliberations we kept steadily in our view that which appears to us the greatest interest of every true American, the consolidation of our union, in which is involved our prosperity, felicity, safety, perhaps our national existence."

§ 182. The above resolution in favor of a national government was strenuously opposed by several members of the convention, who were unwilling that the sovereignty of the states should be given up. They insisted that the people expected only an amendment of the confederation, and not a new form of government. And some of them, having lost all hope of carrying their point, left the convention long before its close.

§ 183. The history of the formation and adoption of the constitution, corrects a very general misapprehension respecting the origin and application of the term " federal." Those were called *federalists*, who, in the convention, opposed the constitution, and were in favor of the then existing confederation of independent sovereignties ; and the advocates of the constitution were, by way of contradistinction, called *anti-federalists*. But soon after, while the proposed constitution was before the people for their consideration, those who were in favor of its adoption, took the name of federalists, and bestowed upon the other party the name of anti-federalists, thereby intimating that the opposers of the constitution were opposed to any union of the states. One of the consequences of this change of the names of parties, has been the misapplication of the word *federal* to the present *national* government ; whereas the term, " federal government," was originally applied to the confederation.

§ 184. It will be seen, however, upon examination, that the government is not entirely national in its character, but that it still retains some of its original federative features. The act of establishing the constitution was in one respect

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there that the present is a *national* union ? § 183. To whom was the term " federal" formerly applied ? § 184. What federal features are

a federal act: it was adopted and ratified by the people, not as individuals composing an entire nation, but as composing the distinct states to which they respectively belonged. The federal principle is observed too in the manner in which the senate is constituted. (§ 216.) The same principles will be found in sundry other provisions of the constitution.

Having shown the nature of the union of the states under the present constitution, the *objects* of this union enumerated in the preamble will next be considered.

§ 185. The first object of framing the constitution, was "to form a more perfect union." It had been the general opinion of the people, that their safety and prosperity required that they should continue firmly united, for all general purposes, under one general government. But when the adoption of the constitution was depending, there were those who opposed the contemplated union, and advocated a division of the states into three or four distinct confederacies, or independent sovereignties. The pens of the ablest statesmen and the purest patriots of that day, were drawn forth in defence of the union, showing its utility to the political prosperity of the people; the insufficiency of the confederation to preserve that union; and the adaptation of the proposed government to the end in view. The good sense of the people prevailed; the new form of government was adopted; and we their "posterity" enjoy the blessings of this "more perfect union."

§ 186. The next object of the union is "to establish justice." Provision had been made by the states to protect the rights of their own citizens. But without some provision in the general government, there could be no certainty that justice would be impartially administered to the citizens of other states. Laws had been made in some states, giving unjust preferences to their own citizens. Provision has accordingly been made in the constitution to place the citizens of all the states on the same footing. (§ 534, 535.)

§ 187. A national government was necessary also to settle controversies between states, between citizens of different

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retained in the constitution? § 185. What sentiment, opposed to the union, prevailed when the constitution was depending? § 186, 187. What particular evils were to be remedied in the object "to establish

states, and between a state or its citizens, and foreign states or citizens. Private debts were paid in paper money almost worthless; and foreigners were either denied payment, or put to great inconvenience in recovering their dues. Provision for the payment of the public debt had not been made; nor had the government then existing the power or means of doing so. To restore public and private credit, by enabling debtors to discharge their contracts in a sound currency, a change in the government, like that which the constitution contemplated, became necessary.

§ 188. "To ensure domestic tranquillity," is another object of the constitution. In a state of disunion, dissensions would be likely to arise between the states or confederacies, which might result in violent contests with each other. Disputes had frequently arisen between states, and were settled with difficulty. From similar causes, future controversies were to be apprehended, which could be settled only by a national government.

§ 189. The union under the constitution also furnishes a safeguard against domestic factions and insurrections. A *faction* is a number of persons, whether a majority or minority of the whole, who unite in opposing the rights of other persons, or the interests of the community. And while men, in a free country, pursue different interests, the causes of faction will exist; and they cannot be removed without destroying liberty itself. So long as a faction consists of less than a majority, its purposes cannot be carried into effect: but if it should embrace a majority of the citizens of a state, it would have the power of oppressing the minority by unjust laws; and, to maintain itself in power, it might go so far as to change the form of government. The confederated power of the states in a national government, can prevent or suppress factions. If an insurrection, (a forcible opposition to the execution of law,) should break out in any of the states, it may be quelled by the general government.

§ 190. The next object expressed in the preamble, is, "to provide for the common defence." Divided into separate

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justice?" § 188. What was contemplated in the object "to ensure domestic tranquillity?" § 189. What effect has the union against factions and insurrections? What are they? § 190. What reason is

independent states, or united into any number of confederacies, how could each protect itself against the encroachments of the others ; or resist the attacks of foreign nations ? A military force of the same strength would be necessary to defend a small state or confederacy as a large one ; and the expense of maintaining a body of troops sufficient for its protection, would be intolerably burdensome to the citizens of a single state or small confederacy.

§ 191. Another object is, “to promote the general welfare.” It is easy to perceive that this could not, or at least would not be done by the states. Each state, seeking the welfare of its own citizens, would adopt measures which would operate injuriously upon the citizens of other states. Nor is it probable that all the states would unite in plans for promoting the common welfare. These can be carried into effect by a common power having the necessary jurisdiction.

§ 192. The last object mentioned in the preamble, is, “to secure the blessings of liberty to ourselves and our posterity.” The liberties of the American people had been achieved by a severe struggle, and at a great expense ; and the authors of our invaluable constitution, knew well how to appreciate the blessings of civil and religious freedom. It had become apparent that these blessings could not be long enjoyed under the government then existing. With the hope of securing and perpetuating them, the constitution was formed ; and the experience of half a century has shown how remarkably it is adapted to answer the ends of its formation.

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## CHAPTER IV.

### *Legislative Department.—House of Representatives.*

§ 193. “ALL legislative powers herein granted, shall be vested in a congress of the United States, which shall con-

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there in favor of union for the common defence ? § 191. Why would not the general welfare be promoted without union ? § 192. What is the last general object expressed in the preamble ?

§ 193. Wherein is the legislative power of the union vested ? § 194

“sist of a senate and house of representatives.”—*Constitution, article 1, section 1.*

§ 194. The propriety of dividing the legislature into two branches, has been shown. (§ 67.) It is obvious; that the passage of improper laws will often be prevented by the check which one branch has upon the other. Some of the state legislatures, as well as congress under the confederation, consisted of single bodies; and their proceedings in many instances had proved the necessity of the division of the legislative power, in order to prevent the evil consequences of hasty legislation.

§ 195. “The house of representatives shall be composed of members chosen every second year by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.”—*Article 1, section 2, clause 1.*

§ 196. Under the confederation, the delegates from each state to the congress, were appointed by the state legislature. The people, however, prior to the adoption of the constitution, enjoyed the right of electing their representatives in the legislatures of their respective states. And as it is an essential principle of republican institutions, that representatives be immediately dependent on the people, with whom they have a common interest, the privilege of electing the popular branch of the national legislature was secured to them by the constitution.

§ 197. The qualifications of the electors in the different states were so various, that any uniform rule which the convention might have established, would have been dissatisfactory to some of the states. The mode adopted must be satisfactory to every state, because it is conformable to the standard which it has established for itself.

§ 198. Representatives are chosen for two years. A short term of office is best calculated to ensure obedience, on the part of a representative, to the will of those whom

Why is a legislature divided? § 195. How is the house composed? What are the qualifications of the electors? § 196. How were delegates to congress elected under the confederation? § 197. Why are not qualifications of electors uniform in all the states? § 198. What



he represents. (§ 64.) Delegates were, by the confederation, required to be appointed every year; and they might be recalled at any time within the year, and others might be sent in their stead for the remainder of the term. But a period so short, it was presumed, would keep in the house too many new members, destitute of the knowledge and experience necessary to a due performance of the important duties of a national representative. Hence it was supposed, that the interests of the nation would be best promoted by fixing the term at two years.

§ 199. "No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen."—*Art. 1, sec. 2, cl. 2.*

§ 200. The provision with respect to age, is intended to exclude men who have not had time and opportunities of acquiring a general knowledge of public affairs. Few young men, at the age of twenty-one, possess the wisdom and maturity of judgment which are essential to a proper discharge of the duties of a legislator. Besides, their characters are not fully established at that age, or they are not sufficiently known to entitle them to the confidence of those whose interests are to be represented in the councils of the nation.

§ 201. That no others than citizens of the United States ought to be eligible to the office of representative, is evident. The attachment of foreigners to our country is presumed to be too feeble, and their knowledge of our free institutions too limited, to be intrusted with political or civil power. A long term of citizenship is therefore made an indispensable qualification for a representative. By seven years' citizenship is not meant seven years' residence. A foreigner or alien, when naturalized, becomes a citizen, and is entitled to the privileges of native born citizens, but not until then. And as a residence of at least five years is in all cases required before he can be naturalized, and as

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are the advantages and disadvantages of a short term of office? § 199. What are the qualifications of representatives? § 200. What is the object of the qualification respecting age? § 201. Respecting

an additional residence of seven years is required to render him eligible to this office, the door seems to be effectually closed against foreign influence in the government. (§ 319—328.)

§ 202. To be a representative he must be an inhabitant of the state in which he is chosen, in order to secure, on his part, an intimate knowledge of the interests of those whom he represents. As the constitution does not designate any particular part of the state in which he must reside, a residence in any part of it, though without the bounds of the district he is to represent, renders him eligible, unless there be a special law of the state to the contrary.

§ 203. "Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three."—*Art. 1, sec. 2, cl. 3.*

§ 204. The apportionment of representatives was a subject of much debate in the convention. The small states had, under the confederation, the same power in congress as the large ones. Each state was entitled to not less than two nor more than seven delegates; and had one vote, the

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citizenship? What is citizenship? § 202. Must a representative reside within the district he represents? § 203. How are representatives apportioned among the states? To what is their number restricted? § 204. What was the relative power of the large and

votes on all questions being taken by states, a majority of the delegates of a state determining its vote. The small states insisted on retaining the same power; the large states, on the contrary, contended for a representation in proportion to the number of inhabitants which each state contained. So unyielding were the members on both sides, that the convention was on the point of being broken up.

§ 205. The uniting upon a system of apportionment was rendered the more difficult, by the slaveholding states claiming a representation according to numbers, bond and free; and the free states insisting on a representation according to the number of free persons only. It was held to be proper to take slaves into consideration when taxes were to be apportioned, because it might discourage slavery; but the principle of taking slaves into computation in apportioning representatives, involved the absurdity of increasing the power of a state in making laws for freemen, in proportion as it violated the rights of freedom. It was improper to represent men who had no will of their own. On the other hand it was said, that representation and taxation ought to go together, and one uniform rule ought to apply to both. It would not be just to compute slaves in the assessment of taxes, and discard them in the apportionment of representatives. In imposing a burden, some advantage ought to be conferred. A compromise was at length effected: The non-slaveholding states assented to the proposition, that three fifths of the number of slaves be added to the number of free white persons in forming the basis of representation, on condition that they be computed in the assessment of direct taxes also.

§ 206. Hence it appears, that the slaveholding states have a greater number of representatives in proportion to the number of their free white population, than the other states. To illustrate this, suppose a state to contain 600,000 free persons, and 500,000 slaves. Three-fifths of the number of slaves is 300,000: this number added to the number of

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small states in congress under the confederation? § 205. What increased the difficulty of agreeing upon a rule of apportionment? What reasons were given for and against slave representation? § 206. Illustrate, by example, the effect of the present basis of representation

free persons, makes 900,000. Now if one representative were allowed for every 30,000 inhabitants, the state would have thirty representatives; whereas a state containing 600,000 free persons and no slaves, would be entitled to twenty representatives only. For the advantage which the slaveholding states gained by this compromise, the non-slaveholding states have not realized an equivalent from the taxation of slave property, inasmuch as direct taxes have not hitherto been found necessary to any considerable extent; and probably will not be necessary in time to come.

§ 207. The people are numbered every ten years. Frequent enumerations are made, that the representation of each state may keep pace with its population. The number of inhabitants in some states may remain nearly stationary, while in others the number may, within the space of ten years, increase two or three fold. The latter ought therefore to be entitled to a corresponding increase of the number of representatives. When the constitution took effect, New York and Maryland had each six representatives. So much more rapid has been the increase of population in the former state than in the latter, that while Maryland has at present but eight representatives in the house, New York is entitled to forty.

§ 208. The first enumeration was made in 1790; and an enumeration has been made every ten years since. Congress is by the constitution authorized to direct by law the manner in which the census shall be taken. It has accordingly enacted, that each state legislature shall prescribe the manner in which the census shall be taken in such state. *Census*, among the Romans, signified the valuation of a man's estate, and the registering of himself, his age, his family, and his servants. In the United States it means the enumeration of the people.

§ 209. The number of representatives may not exceed one for every 30,000 inhabitants. This restriction is in-

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upon non-slaveholding states. § 207. Why are periodical enumerations of the people required? § 208. When was the first enumeration made? What is *census*? § 209. Why is the number of representatives restricted? What is the present ratio of representation?

tended to prevent the house from becoming too large. A very numerous legislative body cannot transact business with the same degree of convenience and despatch as a smaller assembly. To keep the house within suitable limits, congress has, from time to time, as the population has increased, changed the ratio of representation. Under the first census, the ratio was 33,000, and the number of representatives 106. A new apportionment has been made after every successive enumeration. After the last census, taken in 1830, the ratio was fixed at 47,700, giving, as the result, 240 representatives to all the states. [The new states of Michigan and Arkansas have since been admitted into the union, with one representative each.]

§ 210. But each state must have at least one representative. Without this provision, the ratio might be fixed so high as to deprive a state entirely of a representation in the house. Had a ratio of 100,000 been adopted after the census of 1830, both Delaware and Rhode Island would have been excluded, neither having a population sufficiently numerous to entitle it to a representative. Hence the necessity of a constitutional provision, securing to each state a due representation. By an act of congress, every territory also, belonging to the United States, in which a government is established, has the right of sending a delegate to congress. Such delegate is entitled to a seat in the house, with the right of debating ; but he is not allowed the privilege of voting.

§ 211. The distribution and election of the representatives of each state, are determined by a law of the state legislature. A state is divided into a number of districts equal to the number of representatives to which it is entitled ; each district comprising, as nearly as may be, the number of inhabitants entitled to a representative, who is chosen by the electors of such district. For convenience, some districts are so constituted as to embrace a population entitling each to two or more representatives. Another mode is to vote for all the representatives on one ticket,

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What is *ratio* ? § 210. Why is it provided that each state shall have at least one representative ? What right has a territory ? § 211. How are representatives distributed and elected in each state ?

throughout the state. This is called electing by general ticket. Very few states, however, practise this mode.

§ 212. "When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies"—*Art. 1, sec. 2, cl. 4.*

§ 213. As vacancies sometimes happen by the death, resignation, or removal, of some of the representatives of a state, such vacant districts, which may sometimes comprise a great portion, or even the whole of such state, would remain unrepresented till the next regular election, unless some provision had been made to fill such vacancies. Persons chosen to fill vacancies, hold their offices only for the unexpired term of those whose places they are chosen to supply.

§ 214. "The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment."—*Art. 1, sec. 2, cl. 5.*

The election of officers of a legislative body, and also the subject of impeachment, are treated of in other places. (§ 71, 72, 105, 106, 230.)

## CHAPTER V.

### *The Senate.*

§ 215. "THE senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof for six years; and each senator shall have one vote."—*Art. 1, sec. 3, cl. 1.*

§ 216. The principal objects of the institution of a senate have been considered. (§ 66, 68, 69.) But there were reasons of a more special nature for the manner in which

§ 212. How may vacancies in office be filled? § 213. Why is this provision necessary? § 214. Why is the power of impeachment given to the house?

§ 215. How is the senate composed? How chosen? § 216. Why

the national senate is constituted. We have spoken of the difficulty of reconciling the small states to a *proportional* representation, a representation in proportion to the number of inhabitants of each state. The compromise, in which the small states gave up their claim to equality in the house, was effected, at least in part, by the consent of the large states to an equal representation in the senate. But aside from the necessity of the case, this equality was peculiarly proper. In a government entirely *national*, every district would have a right to a proportional representation ; and in a simple confederacy of independent states, each is entitled to an equal share in the common councils. Hence, in a government like ours, partaking of both the national and federal character, there is a manifest propriety in giving to one branch of the legislature a proportional, and to the other an equal representation.

§ 217. As to the mode of appointing senators, there was a diversity of opinion among the members of the convention. Besides the mode adopted, two others were proposed ; the one, appointment by the house of representatives of the United States ; the other, election by the people of each state. The appointment by the state legislature was, however, presumed to be most congenial with the public opinion. The advantages of this mode are, first, the members of the legislature, from their more extensive acquaintance with public men, are capable of making a more judicious selection ; secondly, the election not being made directly by the people, but by the state governments, senators will not be influenced by the same local interests and sectional feelings as the members of the house ; and thus they will exercise a more effectual restraint upon the proceedings of that body.

§ 218. The usual manner in which senators are chosen by a state legislature, is by a *joint* vote ; that is, both houses meet, and vote numerically, as a single body. In some states, the choice is made by a *concurrent* vote. By this mode, each house votes separately, and must concur with

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is each state equally represented in the senate ? § 217. What are the advantages of the present mode of choosing senators ? § 218. What different modes of choosing senators are practised ? § 219. Why

the other as in the passage of a law. In cases of disagreement between the two houses, the election of senators by a concurrent vote, is often attended with much difficulty ; for so long as each house adheres to its favorite candidate, no election can be effected : And, as a consequence, a state is often for a long time deprived of a full representation in the national senate.

§ 219. A long term of office of senators is considered necessary to prevent the evils which flow from instability in the administration of the government. (§ 66.) Among the framers of the constitution were those who were in favor of appointing senators during good behavior. Others proposed specific periods for the term of service, differing in length, from three to nine years. The medium of six years was adopted, as being supposed to be sufficiently long to impart firmness and stability to the senate, and yet short enough to secure a due sense of responsibility on the part of the members.

§ 220. "Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year ; so that one third may be chosen every second year : and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies."

§ 221. This division and classification of the senate, by which one third only of the members are vacated every second year, are calculated to secure the service, at all times, of a majority of experienced members, acquainted with the general principles of national policy, and with the forms and course of business.

§ 222. Without the authority given in this clause to the

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are senators elected for a longer term than representatives ? § 220. How are the senators divided and classified ? How are vacancies filled ? § 221. What is the object of this division and classification of the sen



executive of a state to fill casual vacancies, either the legislature must be specially convened to make the appointment, or the state must be, for a time, without a full vote in the national legislature. The executive of a state cannot constitutionally make an appointment before the vacancy actually occurs. In 1825, the governor of the state of Connecticut, having been previously notified that the senate would be convened on the fourth of March, and the legislature of the state not being in session, made an appointment, in February, to fill a vacancy that must occur on the third day of March, by the expiration of the term of service of one of the senators from that state. But the appointment having been made before the vacancy had occurred, the senate decided, by a vote of 23 to 18, that the senator thus appointed, was not entitled to a seat.

§ 223. "No person shall be a senator, who shall not have attained the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen."—*Art. 1, sec. 3, cl. 3.*

§ 224. The propriety of requiring greater age and a longer period of citizenship as qualifications for a senator than for a representative, will appear from the superior weight and delicacy of the trusts confided to this body. Besides its duties as a component part of the legislature, it has to act in a judicial capacity in trials of impeachment; and, in conjunction with the president, it makes treaties with foreign nations, and appoints ambassadors and other high executive, as well as judicial officers. No person is qualified for such a station who does not possess much experience, a firm character, and a strong attachment to the principles of the government.

§ 225. "The vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided."—*Art. 1, sec. 3, cl. 4.*

§ 226. If the senate should, like the house, choose one of

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etc? § 222. Can a state executive make an appointment before a vacancy actually happens? § 223. What qualifications are required of senators? § 224. Why are higher qualifications required for senators than for representatives? § 225, 226. For what reasons is the vice

its own members to preside over its deliberations, the state represented by such senator would be deprived of half its vote in that body, except when it is equally divided ; a presiding officer being entitled to vote in such cases only. And if, to remedy this, the presiding senator were allowed to vote on all questions, then, in case of a tie, there would be no casting vote, without permitting him to vote a second time. This would give his state an undue influence. The vice president, chosen by all the states, seems to be the proper person to preside in the senate.

§ 227. "The senate shall choose their other officers, and also a president pro tempore, in the absence of the vice president, or when he shall exercise the office of president of the United States."—*Art. 1, sec. 3, cl. 5.*

§ 228. The "other officers" of the senate are the same as those of the house, and are chosen in the same manner. In the absence of the vice president, it becomes necessary to elect a presiding officer from the senators. *Pro tempore* is a Latin phrase, signifying, for the time. It here means, for the time during which the vice president shall be absent from the senate.

§ 229. "The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside : and no person shall be convicted without the concurrence of two thirds of the members present."—*Art. 1, sec. 3, cl. 6.*

§ 230. The power of impeachment, that is, the power of originating the inquiry, and preferring the accusation, is given to the house, (§ 214,) because its members more immediately represent the people against whom the offence may be considered to have been committed ; the senate being farther removed from the people, and consequently less liable to act under the influence of party, or of popular excitement, are more fit to sit as *judges* on a trial for impeachment. A prominent objection against investing the senate with this

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president required to preside over the senate ? § 227, 228. What officers has the senate ? What is *pro tempore* ? § 229. What power has the senate in impeachments ? § 230. Why is this power given to

power is, that the exercise of judicial functions by a legislature, contravenes that principle in our government which requires a separation of the legislative and judicial powers. It is proper, therefore, to consider some of the reasons why the constitution has, in this particular instance, taken this power from the national judiciary, and given it to the legislature.

§ 231. First, offences which are subject to trial by impeachment, consist in the violation of a public trust. They are in their nature different from those which are investigated in courts of law. They are generally of a political character, and can be better judged of by the senate, whose members, it is presumed, have a more intimate knowledge of political duties. Another reason is, that, after conviction and punishment for his political misdemeanor, the offender is still liable to prosecution and punishment in the ordinary course of law ; and it would be improper to make the same persons judges in both cases. An error in the first decision, would be almost certainly followed by error in the second. Thirdly, the judges themselves may be the persons impeached ; and all must see the impropriety of authorizing a court composed of so few persons to try any of its own members.

§ 232. The requirement of an oath or affirmation is universally esteemed of so much importance in securing justice in trials by jury, that none will question its propriety in a trial of impeachment, where the members of the court act as jurors as well as judges. An *oath* is a solemn appeal to God to bear witness to the truth of what is declared. An *affirmation* is the simple declaration of a fact. When falsely made in a court of justice, it is made punishable, however, in the same degree as false swearing.

§ 233. There is good reason why the vice president should not preside in a trial of the president. He might be induced to use improper influence in attempting to procure a conviction of the president, as, in that event, the vice president succeeds to the office.

§ 234. In trials by jury, all the jurors must agree in or-

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the senate ? § 231. Why is it not given to the judges ? § 232. What is an *oath* ? An *affirmation* ? § 233. Why ought not the vice president to preside when the president is tried ? § 234. Why are two

der to conviction ; but in a trial by so numerous a body, unanimity is hardly to be expected in the clearest cases of guilt. And as a bare majority might easily be obtained by improper influence upon some one or two of the members, a majority of two thirds would seem to be the proper proportion of the body required to concur in an opinion of the guilt of the accused.

§ 235. "Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States. But the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law."—*Art. 1, sec. 3, cl. 7.*

§ 236. As the power of impeachment is intended to punish political offences, removal from office, and entire exclusion from office in future, is sufficient punishment, provided the offender be left subject to the penalty of the law as an offender against the peace of the community.

## CHAPTER VI.

### *Elections—Meetings of Congress—Powers and Privileges of both Houses—Passing Bills.*

§ 237. "The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators."—*Art. 1, sec. 4, cl. 1.*

§ 238. There can be no impropriety, in ordinary cases, in permitting the states to regulate the elections of their representatives as convenience may require ; and congress has not hitherto exercised the power reserved by the national

thirds of the senators required for conviction ? § 235. How far does judgment extend in case of conviction ?

§ 237, 238. Why is the power reserved to congress to make or alter

government, of interfering with the regulations of any state on this subject. But to have given to the state legislatures exclusive power of regulating elections for the national government, would have left the existence of the union at their mercy ; for, by neglecting to provide for electing persons to administer its affairs, the government would be destroyed.

§ 239. "The congress shall assemble at least once every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day."—*Art. 1, sec. 4, cl. 2.*

§ 240. The interests of the people would seem to require the attention of congress as often, at least, as once in a year ; and an express constitutional provision to this effect is necessary, as congress, moved by improper considerations, might postpone its meetings beyond the proper time, and thus cause much injury to the citizens. The place of meeting is not fixed by the constitution ; and congress has by law provided, that when, from the prevalence of contagious sickness, or from other circumstances, it would be dangerous to the health of members to meet at the place to which congress shall stand adjourned, the president of the United States may, by proclamation, convene congress at such other place as he may judge proper.

§ 241. "Each house shall be the judge of the elections, returns, and qualifications of its own members ; and a majority of each shall constitute a quorum to do business ; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide."—*Art. 1, sec. 5, cl. 1.*

§ 242. The right here granted to judge of the elections and qualifications of members, was intended to preserve a pure representation, by enabling congress to close the door against all persons unlawfully claiming a seat. It sometimes happens, that, in consequence of some alleged unfairness or irregularity in the election or return of a member,

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the state regulations concerning elections ? § 239, 240. Why is congress required to assemble once a year ? § 241, 242. Why is each house constituted the judge of the elections, &c., of its members ?

his seat is claimed by an opposing candidate. In such a case, the house institutes an investigation, and decides which of the claimants is entitled to the seat.

§ 243. *Quorum*, in its common acceptance, means such a number of officers or members as is by law or the constitution declared competent to transact business. It would be impolitic to allow a number less than a majority to pass laws for the nation; and, unless a smaller number had power to adjourn from day to day, and to compel absent members to attend, the business of legislation might be arrested.

§ 244. "Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member."—*Art. 1, sec. 5, cl. 2.*

§ 245. Without some rules to govern its deliberations, no legislative body could transact business with order or despatch; and, without power to enforce obedience to these rules, they would be useless. Some restraint, however, upon the exercise of this power, was deemed necessary to prevent its abuse. Two thirds will not be likely to concur in expelling a member, unless the case plainly demands it. A member may be expelled for a misdemeanor committed elsewhere than in the house to which he belongs. From the power to punish members for disorderly behavior, congress has inferred and exercise the power of punishing for contempt other persons than its own members.

§ 246. "Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy: and the yeas and nays of the members of either house, on any question, shall, at the desire of one fifth of those present, be entered on the journal."—*Art. 1, sec. 5, cl. 3.*

§ 247. The above provisions are intended to keep the people informed of what is done by their representatives. By publishing the yeas and nays, the vote of every member is made known, and a perfect accountability to his constituents ensured. But to prevent a needless waste of time in

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§ 243. What is a *quorum*? Why is a majority required? § 244, 245. What power has each house to enforce obedience to its rules? § 246. What is provided in relation to keeping a journal? § 247. What is

recording the yeas and nays on unimportant questions, at the pleasure of a single member, it may be dispensed with, unless requested by one fifth of the members present.

§ 248. Besides the number of copies of the public journals usually printed, there are printed several hundred copies, of which twenty-five are to be deposited in the library of congress, for the use of the members during any session, and all other persons authorized by law to use the books in the library. As many other copies are transmitted to the executive of each state and territory, as are sufficient to furnish one copy to each branch of such state or territorial legislature; and one copy to each college and incorporated historical society in each state. The residue are deposited in the library of the United States, subject to the future disposal of congress.

§ 249. The printing for congress, as it regards the manner and prices of the work, is regulated by law. Before the close of each congress, as the practice has been, a printer is chosen by each house, to execute its work during the next congress. The person elected is required to give a bond, with sureties, to the secretary or clerk of the house, for the prompt and faithful execution of the work.

§ 250. For the due publication of the laws among the people at large, as many newspapers, in the different sections of the union, as are deemed necessary for this purpose, are designated by the proper authority; in which newspapers, the laws enacted at each session of congress are published. These laws are also published in the form of books or pamphlets, and a sufficient number of copies sent to each state to furnish one copy to every town clerk, to be kept in his office for the use of the inhabitants of the town. Thus every citizen may become acquainted with the laws.

§ 251. "Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting."—*Art. 1, sec. 5, cl. 4.*

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the object of publishing the proceedings of a legislature? § 248. What distribution is made of the public journals? § 249. How is the printing of congress regulated? § 250. What provision has been made for publishing the laws of congress? § 251. To what time are adjourn-

§ 252. Unless some restraint were imposed upon congress, either house might interrupt the public business, by adjournments for periods of time of unnecessary length. The time of the final adjournment is fixed by a concurrent resolution of both houses. Every second year, congress must of necessity adjourn on the third day of March, as the terms for which all the representatives and one-third of the senators are elected, expire on that day. It is the day also on which, in every fourth year, the president's term of office expires.

§ 253. "The senators and representatives shall receive "a compensation for their services, to be ascertained by "law, and paid out of the treasury of the United States. "They shall in all cases, except treason, felony, or breach "of the peace, be privileged from arrest, during their at- "tendance at the session of their respective houses, and in "going to and returning from the same; and for any speech "or debate in either house, they shall not be questioned in "any other place."—*Art. 1, sec. 6, cl. 1.*

§ 254. If adequate compensation were not allowed to members of congress, men of poverty, however meritorious, would be excluded from the councils of the nation; and the law-making power would be thrown into the hands of such wealthy and ambitious persons as would be able or willing to support themselves in office. The practical result of this would be, that the rich and powerful would legislate for their own benefit. The present compensation of a member of congress is eight dollars for every day's attendance in the house, and eight dollars for every twenty miles of the estimated distance, by the most usual route, from his residence, both going to, and returning from, the place of the meeting of congress. The president of the senate *pro tempore*, in the absence of the vice president, and the speaker of the house of representatives, respectively receive double daily compensation for every day's attendance.

§ 255. Privilege from arrest is due, no less to the constit-

ments limited? § 252. What is the object of this limitation? § 253. What does the constitution provide concerning the compensation and privileges of members? § 254. What is the compensation of members? Why is compensation deemed necessary? § 255. Why is the



uents of a representative, than to himself. Prosecutions at law might be instituted against members, from motives of personal resentment or political animosity, with the design of preventing their attendance in congress. Hence the necessity of a provision securing to the people the services of their representatives.

§ 256. Freedom of speech and debate is guarantied to members of congress, that they discharge their duties fearlessly. Questions sometimes arise which affect the character of individuals, who, to prevent the exposure of their conduct, might attempt to intimidate members, or awe them into silence, by threats of prosecution. Liberty of speech is therefore properly secured to members by constitutional enactment. If, however, a member *publish* a speech containing libellous statements, he may be prosecuted as in ordinary cases of libel.

§ 257. "No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time: and no person holding any office under the United States, shall be a member of either house during his continuance in office."—*Art. 1, sec. 6, cl. 2.*

§ 258. The object of this clause is to preserve the purity of legislation. Civil offices are created, and the salaries of public officers established, by congress. And as the power of appointment virtually resides in the executive, with whom members might previously collude for appointment to these offices, a provision prohibiting such appointment was inserted in the constitution, in order to remove from members all inducements to create unnecessary offices. A person may be elected to congress by the people, while holding an office under the United States; but such office must be resigned before he can be entitled to a seat in congress.

§ 259. In carrying out the intention of this clause, con-

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privilege from arrest granted? § 256. Why is freedom of speech and debate allowed? When does a libellous statement become punishable? § 257. Under what restrictions are members respecting the receiving and holding of offices? § 258, 259. Why are these restrictions deemed

gress has provided, by law, that no member shall be allowed to make any contract, or have any interest in any contract to be made, with any officer of the United States, or with any person authorized to make contracts on the part of the United States. Upon conviction for a violation of this law, a member is adjudged guilty of a high misdemeanor, and liable to be fined three thousand dollars; and the contract is declared void.

§ 260. "All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills."—*Art. 1, sec. 7, cl. 1.*

§ 261. The former part of this clause is conformable to the practice of the parliament of Great Britain, in which bills for raising revenue originate in the house of commons. It was deemed proper to confine this power to the popular branch, whose members are directly responsible to the people, from whom the tax or revenue is to be collected. The necessity, however, of such a provision in our constitution is by some supposed not to exist. It is thought necessary in Great Britain, because the house of lords are entirely independent of the people, having hereditary rights and privileges. But no argument can be drawn from the British house of lords, as the senate of the United States is at least indirectly accountable to the people. Bills for raising revenue, according to the practice of congress, are such only as provide for levying taxes, in the strict sense of the term. Those which *indirectly* increase or create revenues, may originate in either house.

§ 262. "Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States: if he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their

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necessary? Illustrate this provision by an example? § 260. In which house must revenue bills originate? § 261. Why is their origination confined to the house? What are revenue bills? § 262. What power has the president in enacting laws? How may bills become laws without his approval? Describe the manner of passing bills. (§ 75-78.)

“~~was~~al, and proceed to reconsider it. If, after such re-  
 “consideration, two thirds of that house shall agree to pass  
 “the bill, it shall be sent, together with the objections, to the  
 “other house, by which it shall likewise be reconsidered;  
 “and, if approved by two thirds of that house, it shall be-  
 “come a law. But, in all such cases, the votes of both  
 “houses shall be determined by yeas and nays; and the  
 “names of the persons voting for and against the bill, shall  
 “be entered on the journal of each house respectively. If  
 “any bill shall not be returned by the president within ten  
 “days, (Sundays excepted,) after it shall have been pre-  
 “sented to him, the same shall be a law, in like manner as  
 “if he had signed it, unless the congress, by their adjourn-  
 “ment, prevent its return, in which case it shall not be a  
 “law.”—*Art. 1, sec. 7. cl. 2.*

For the manner of passing bills, and the reasons for the power of the executive to negative bills passed by both houses, see § 79, 80, 81, 82.

§ 263. “Every order, resolution, or vote, to which the  
 “concurrence of the senate and house of representatives  
 “may be necessary, (except on a question of adjournment,)”  
 “shall be presented to the president of the United States;  
 “and, before the same shall take effect, shall be approved  
 “by him; or, being disapproved by him, shall be repassed  
 “by two thirds of the senate and house of representatives,  
 “according to the rules and limitations prescribed in the  
 “case of a bill.”—*Art. 1, sec. 7, cl. 3.*

§ 264. This clause is intended to prevent the evasion of the president's negative. It was foreseen that, instead of enacting laws in the usual manner by passing *bills*, congress might change its mode of action, and pass any measure in the form of an order or resolution. Hence every *vote* requiring the concurrence of both houses must be presented to the president for his approval; except on a question of adjournment; and in this case he has no power, unless the two houses cannot agree upon the time. (§ 492.)

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§ 263, 264. What provision has been made to prevent an evasion of the president's negative?

## CHAPTER VII.

*Powers of Congress.—Taxes, Duties, &c.*

§ 265. "THE congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States."—*Art. 1, sec. 8, cl. 1.*

§ 266. Some suppose this clause was intended to confer two distinct powers; one, to lay and collect taxes, duties, &c.; the other, to pay the debts, and provide for the common defence and general welfare. Others are of the opinion, that only one power is granted, namely, to lay and collect taxes; and that these words are qualified by those following; as if the clause were to read, "congress shall have power to lay and collect taxes, duties, imposts, and excises," *for the purpose of paying, or in order to pay the debts; and provide for the common defence and general welfare.* The latter appears to be the more natural construction, and is that which has been given to the clause by most expositors of the constitution, among whom is Mr. Jefferson.

§ 267. It has been remarked, that every government ought to have power to provide for its support. For this purpose, the power of taxation is indispensable; for, without it, a government cannot furnish the money necessary to defray the expenses of its administration. The want of this power under the confederation, had been severely felt. The framers of the constitution, therefore, to remedy this defect, inserted this clause, granting complete power to procure a regular and adequate supply of revenue.

§ 268. This clause, however, met with much opposition, both in the convention of the framers, and in the conventions of the people of the states by which the constitution was

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§ 265. For what purposes may congress lay and collect taxes and duties? § 266. What various constructions have been given to this clause? § 267. Why is the power of taxation necessary? § 268.

ratified. It was supposed to confer upon the general government a power which could be too extensively exercised. It was said, that the power of congress ought to be restricted to the laying of indirect taxes, or duties on imports, except when the revenue from these should be insufficient for the public exigency ; and that the states could better judge of the circumstances of their citizens, and of the most convenient manner of raising taxes. And it was proposed that the general government should first require the states to pay their respective quotas into the national treasury ; and that when they should fail to comply with the requisition, congress might pass acts for their collection.

§ 269. On the other hand it was observed, that to provide for the security of the nation, to advance its prosperity, and maintain its credit, a full and complete power of taxation was necessary. The revenue arising from import duties might be sufficient to pay the public debt, and to supply the public wants in a state of peace. But the operations of war are sudden, and call for large sums of money. Experience had proved, that collections from the states were at best slow and uncertain, and that no dependence could be placed on them. A general power of taxation was necessary also to sustain the public credit. In providing for the defence of the nation, the government must have recourse to large loans. But persons would not readily lend money to a government which must itself depend upon thirteen other governments for the means of fulfilling its contracts. The power to create funds by taxation, would enable the government to borrow to the extent of its necessities.

§ 270. The power of taxation extends to all kinds of taxes ; but it can levy them for no other purpose than that of paying the debts of the nation, and of providing for its defence and general welfare. And all duties, imposts, and excises must be uniform throughout the United States. Without this provision, some states might be subjected to the payment of higher duties than others, and the interests of one state be sacrificed by undue preferences given to

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What objections were made to this clause? § 269. What reasons were given in favor of an unlimited power of taxation? § 270. For what purposes only may taxes be laid? Why ought they to be uni-

those of other states. Farther provision has been made in the constitution for preserving the equal rights of the states. (§ 436.)

§ 271. Duties are laid on imports and tonnage. Impost duties are either specific or ad valorem. A *specific duty* is a tax of a certain, fixed amount, on an article by weight or measure. Thus, a duty of ten cents on a pound of tea, or of thirty cents on a yard of cloth, is called a specific duty. *Ad valorem* is a Latin phrase, signifying, according to the value. An ad valorem duty is one that is proportioned to the value of the goods; or, it is a per centage on the estimated cost or value of an article. A duty of fifty per cent., that is, a duty laid at the rate of fifty cents on every hundred cents of the price of an article, is an ad valorem duty. A duty of fifty per cent. on a yard of cloth valued at one dollar a yard, would make the duty fifty cents on the yard; but if the price of the cloth were one dollar and fifty cents a yard, the duty at fifty per cent. would be seventy-five cents, the *amount* of duty being greater, but in both cases bearing the same proportion to the value of the article.

§ 272. Duties are collected of the importer, on the supposition that the goods imported will be sold by him for home consumption. As duties on imports are intended principally to affect those goods which are brought from abroad, and consumed or used by our citizens, it has been provided by law, that, if the goods on which duties have been paid shall be re-exported, either the whole or a part of the duties shall be remitted to the importer. This allowance is called a *drawback*. In England the practice prevails, to some extent, of allowing the merchant who imports a commodity which he may wish to export again, to deposit it in the public warehouse, giving a bond for the payment of the duties, should he dispose of it for home consumption. This is called bonding.

§ 273. In the United States, a drawback is allowed on goods re-exported to a foreign place within twelve months

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form throughout the states? § 271. What are *specific duties*? *Ad valorem duties*? Illustrate them by examples. § 272. What is a *drawback*? In what case is it allowed? § 273. On what conditions

after the duties on the importation have been paid, or security has been given for the payment of them : but such exportation must be made by the sea, in vessels of not less than thirty tons burthen ; the duties on the goods must amount to fifty dollars ; and the goods must be exported in the original packages in which they were imported. For the amount of the drawback to which the exporter is entitled, he receives from the collector a *debenture*, which is a certificate stating the sum due to the exporter for the drawback of duties.

§ 274. *Tonnage* is the weight of goods carried in a ship or boat ; also, the cubical contents or burthen of a vessel in tuns. The duties charged on ships according to their burthen, or the number of tuns at which they are rated, are called *tonnage duties*. These duties are fixed by congress, in the regulating commerce and navigation. (§ 306, 307.)

§ 275. For the collection of customs or duties there is appointed in every district of the United States, a *collector*, whose duty it is to receive, at the port within his district, all reports, manifests, and documents to be made or exhibited on the entry of any vessel, to record all manifests, and to receive the entries of all vessels, and the goods imported in them. He is also required to estimate the duties, to receive all moneys paid for duties, and to take bonds for securing their payment. He grants all permits for the unlading and delivery of goods, and, with the approbation of the principal officer of the treasury, employs proper persons as weighers, measurers, gaugers, and inspectors at the ports within his district, and provides storehouses, scales, weights, and measures.

§ 276. At ports where it may be necessary, a naval officer and surveyor also are appointed. A *naval officer* receives copies of all manifests and entries, and, with the collector, estimates the duties on goods, and keeps a record thereof. He countersigns all permits, certificates, clearances, debentures, and other documents granted by the col-

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are drawbacks allowed ? What is a *debenture* ? § 274. What is *tonnage* ? *Tonnage duties* ? § 275. What is the business of a *collector of customs* ? § 276. What are the duties of a naval officer ?

lector; examines the collector's abstracts of duties and other accounts of receipts, bonds, and expenditures; and, if found correct, he certifies them. The *surveyor* superintends and directs the inspectors, weighers, measurers, and gaugers within his port. He visits and inspects the vessels that arrive; and makes a return in writing, every morning, to the collector of vessels arrived the preceding day. He is in all cases subject to the direction of the collector.

§ 277. In each of the large ports of the United States, two *appraisers* are appointed, to inspect and appraise such goods as the collector may direct, and whenever that duty shall be required by any acts relative to imports and tonnage. The collector, naval officer, surveyor, and appraisers, are appointed by the president and senate; all of whom but the last named are required to give bonds for the faithful performance of their duties.

§ 278. The master or captain of every vessel belonging to citizens of the United States, in which goods are imported, is required to have on board a *manifest*, which is a writing signed by himself, stating the name of the place where the goods were taken on board, and of the place to which they are consigned; the name, description, and tonnage of the vessel, and the place where she belongs; the name of each owner and her master, with a particular account of all the goods on board. It contains also the names of the *consignors*, who are the persons that send the goods, and the names of those to whom the goods are sent, called *consignees*.

§ 279. After the report of the master of the vessel to the collector is made, the owner or consignee of the goods makes an *entry* of the same, in writing, with the collector, specifying the names of the vessel and master, the place whence the goods were imported, the marks, numbers, denomination, and prime cost of the same, and swears to the truth of his statement, and its conformity to the manifest. When the amount of duties is ascertained, the consignees pay the same, or give bonds with sureties for the payment of them at a certain time. The collector then grants a written *permit* for the unloading and delivery of the goods.

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Of a surveyor? § 277. What is the duty of appraisers? § 278. What is a *manifest*? Who are consignors and consignees? § 279. When is



§ 280. To secure the collection of duties, congress has made provision, by the imposition of heavy fines and penalties for the violation of the revenue laws, and by authorizing officers of the customs to seize and search vessels that may be suspected of having on board goods subject to duties, the payment of which is designed to be evaded. The getting of goods on shore secretly without paying the duties, is called *smuggling*. In cases of smuggling, and in some other cases of fraud on the customs, all the goods are forfeited, and become the property of the United States.

§ 281. Farther provision has been made for collecting the duties, by authorizing the president to cause to be built and equipped so many revenue cutters, not exceeding twelve, as may be necessary to protect the revenue. A *revenue cutter* is a small, fast sailing vessel used for apprehending smugglers, and for boarding vessels supposed to contain contraband goods. The collectors of the respective districts also may, with the approbation of the secretary of the treasury, provide small open row and sail boats to be used by surveyors and inspectors, to enable them to go on board vessels, and otherwise to detect frauds. All penalties accruing by breaches of the revenue laws, must be sued for in the name of the United States of America, in courts of the United States having jurisdiction in such cases.

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## CHAPTER VIII.

### *Power to borrow Money—Payment of the Public Debt*

§ 282. CONGRESS shall have power, "To borrow money on the credit of the United States."—*Art. 1, sec. 8, cl. 2.*

§ 283. The necessity of a general power of taxation has

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the entry of a vessel made? What is an *entry*? A *permit*? § 280. What provision has been made to secure the collection of duties? What is *smuggling*? § 281. What farther provision has been made to secure the collection of duties? What is a *revenue cutter*?

§ 283, 284. Why is the power to borrow money necessary? § 285.

been shown, (§ 128-130, 267.) The power to borrow money also is necessary to pay the debts, provide for the national defence, and for other purposes to which the ordinary revenue of the nation may be inadequate. To supply the treasury on extraordinary occasions by loans, has been found more convenient than direct taxation. By means of them, the immediate wants of the government are supplied, and the sums borrowed may afterwards be paid from the regular revenues of the nation.

§ 284. The purpose for which congress has found it especially necessary to exercise the power of borrowing money, is the payment of the public debt. By the articles of confederation, the government assumed the public debt previously contracted to support the war; and the present constitution imposed on the United States all debts contracted before its adoption. (§ 552.)

§ 285. The manner in which the government borrows money, is as follows:

When money is wanted to pay a debt, congress passes an act authorizing the secretary of the treasury, or some other person, to borrow the money, and make the United States debtor for the same. The act states the amount to be borrowed, the time when it is to be paid, and the rate of interest. Persons who wish to lend money then subscribe, in books opened for that purpose, the sums they will respectively lend; and for the sums so subscribed and lent, certificates are given by the agent of the government, stating the amount for which the United States are indebted. The debt so contracted, and for which the certificates are given, are called *stocks*. To persons having these certificates, the government pays the interest that accrues on them, quarterly, or as often as the act expresses. These certificates are often bought and sold like any other merchantable commodity. When they are sold at a price equal to the amount expressed in them, stocks are said to be at *par*. When their market price is higher or lower than their nominal value, they are said to be above or below *par*.

§ 286. The whole amount of the public debt existing

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Describe the manner in which government borrows money. What are stocks? § 286. What was the amount of the public debt when

when the constitution was adopted, was nearly \$80,000,000. A tax upon individual property to liquidate so large a debt, would have been, at that time, extremely burdensome to the citizens. Provision was therefore made by the constitution for this purpose. By this means, together with such portion of the revenue as was not required for the support of the government, and the proceeds of the sales of public lands, congress has been enabled so to control the public debt, as almost entirely to prevent the necessity of resorting to direct taxation.

§ 287. By the purchase of Louisiana, in 1803, and the expenses of the late war, the public debt was increased to more than \$127,000,000. One of the means adopted to liquidate the public debt, was the creation, at an early period, of a *sinking fund*, which is a sum of money, or part of the national revenue, which is set apart for the payment of the public debt. Additional yearly appropriations were made, from time to time, until, in consequence of the augmentation of the public debt by the Louisiana stock, it became necessary to increase them to \$8,000,000.

§ 288. By the act of 1817, so much of all former acts as related to appropriations for the purchase of the principal, and payment of the interest of the funded debt, was repealed; and a yearly appropriation of \$10,000,000, arising from duties on imports and tonnage, internal duties, and sales of public lands, was made for the reduction of the public debt. By the application of this sum every year, together with such other portion of the yearly revenue as remained after paying the expenses of the government, the national debt has been extinguished.

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the constitution was adopted? How has direct taxation been avoided in its payment? § 287. What was the amount of the public debt soon after the late war? What means were provided for its liquidation? § 288. What farther provision was made for this purpose, in 1817?

## CHAPTER IX.

*Regulation of Commerce.*

§ 289. CONGRESS shall have power, "To regulate commerce with foreign nations, and among the several states, and with the Indian tribes."—*Art. 1, sec. 8, cl. 3.*

§ 290. *Commerce* signifies a mutual change of goods, productions, or property of any kind, between nations or individuals. • When we speak of the commerce of a nation, we have reference to its trade with other nations. The general power of congress to regulate commerce is not confined to the mere buying and selling, or exchanging of commodities; but extends to navigation, and every species of commercial intercourse with foreign nations, and among the several states.

§ 291. The absence of this power in the articles of confederation, was one of the principal defects of that system which were to be supplied by the constitution. Each state had the power to regulate its commerce with the other states, and with foreign nations; and each, consequently, imposed such duties on the productions of neighboring states and foreign nations as a regard for its own exclusive interests dictated. The mutual jealousies and rivalries which prevailed among the states, induced the adoption of different systems of policy in the different states, which destroyed the prosperity of the whole. To remedy these evils, and to prevent their recurrence, the power to regulate commerce was vested in the general government.

§ 292. The power "to regulate commerce," as also the power "to lay and collect duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare," has been employed in laying duties for the purpose of encouraging domestic or home manufactures. These are called *protecting duties*, being calculated to protect our own citizens against loss from foreign competition.

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§ 289. To what general objects does the power to regulate commerce extend? § 290. What is commerce? What does it include? § 291. Why was this power granted to congress? § 292. For what

§ 293. The nature and object of protecting duties may be thus illustrated :

Suppose the people of the United States to receive their supplies of broadcloth from a foreign country, where the arts have been carried to a high degree of perfection, and whose citizens, from their long experience and superior skill, are enabled to manufacture and sell this commodity at prices below the cost of manufacturing the same in this country. There would be no inducement to our own citizens to engage in the manufacture of cloths, because they could obtain for them in the market no more than is paid for foreign goods of like description. Suppose the price of a particular quality of foreign broadcloth to be three dollars a yard, and the cost of manufacturing cloth of the same quality in this country to be four dollars a yard. Now, let the government lay a duty of fifty per cent. on foreign cloths, and the purchaser of the imported article must pay for it four dollars and fifty cents. Thus the preference would be given to the domestic fabric, and the manufacturer would be protected against injury from the competition of foreigners.

§ 294. But protective duties are by some considered unconstitutional. They maintain that neither the power to lay duties to promote the general welfare, nor the power to regulate trade, authorizes congress to lay duties for the encouragement of domestic manufactures ; that these clauses grant power only to lay duties for the *purpose of revenue* ; and that, when congress imposes duties beyond what may be wanted to meet the necessary expenditures of the government, it transcends its constitutional powers. A construction of this power which would authorize its being exercised for the purpose of protection, would justify its use on the most trivial occasions, on the plea that a measure is demanded by the general welfare. The framers of the constitution cannot be presumed to have intended to confer a power liable to so sweeping and loose a construction.

§ 295. It is maintained, on the other hand, that the powers granted in these clauses must imply the power to lay duties

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purpose has this power been employed ? § 293. Illustrate the nature and operation of a protecting duty. § 294. What objections are made to this exercise of the power to regulate trade ? § 295. By what argu-

to encourage domestic manufactures, because the general welfare may imperiously demand such encouragement. As foreign nations, to favor their own commercial interests, might impose heavy duties upon our productions, it is not probable that the framers of the constitution should have overlooked the necessity of a power somewhere in the government, to countervail the restrictions of foreign nations upon our manufactures and commerce, by a like policy. The common defence, also, it is said, requires the encouragement of home manufactures. The sudden interruption, by war, of our commercial intercourse with a nation on which we had been accustomed to depend for the necessities of life, and perhaps even for the instruments of war, would place the country in an unfavorable condition to defend itself against an independent enemy.

§ 296. The late president Madison, whose authority on constitutional questions is held in the highest respect, and who was himself a distinguished member of the convention that framed the constitution, made known his opinions on this subject, in 1828, a time when the country, as well as congress, was not a little engaged in its discussion. Some of the reasons given by him in favor of the constitutionality of a protective tariff, are contained, in a condensed form, in the following paragraphs :

(1.) The general meaning of the phrase, "to regulate trade," at the time when it was inserted in the constitution, and as understood and used by all commercial and manufacturing nations, especially Great Britain, whose commercial vocabulary is the parent of ours, implies the power of protecting manufactures.

(2.) In the state conventions, in the course of their deliberations on the adoption of the constitution, the transferring of this power from the states to the general government was a subject of particular remark, and its existence acknowledged by both the advocates and opponents of the constitution.

(3.) The exercise of this power by the states is prohibited in the constitution. If congress does not possess the

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ments is its constitutionality supported? § 296. State briefly the reasons of Mr. Madison in favor of a protective tariff. § 298. To

power, it does not exist in the nation ; a policy without example in any other nation.

(4.) This power was exercised in the first session of the first congress under the constitution, by the passage of an act laying duties on imports. The preamble to this act expressly declared one of its objects to be, "the encouragement and protection of domestic manufactures." In this congress were many members of the convention which framed the constitution, and of the state conventions which ratified it ; among whom were both those who were in favor of the constitution, and those who opposed it. Yet it does not appear that the power was denied by any of them.

§ 297. It is to be admitted, however, that many statesmen, of more than ordinary distinction, entertain opinions adverse to those above cited. And here it may not be improper to remark, that the opinions of the most eminent statesmen and politicians, whatever may be their claims to our respect, are not to be *implicitly* relied on as constitutional guides. It behooves every citizen—for all are equally interested—to study carefully for himself the great charter by which he holds his liberties.

§ 298. The power of congress to regulate foreign commerce, extends to wrecks on the seas ; the construction of light houses ; the placing of buoys and beacons ; the removal of obstructions to the navigation in creeks and rivers ; and to the designation of ports of entry and delivery.

§ 299. The power to regulate *internal commerce*, or commerce among the several states, was rendered necessary to give effect to the power of regulating foreign commerce. A material object of this power was to prevent one state from loading the goods imported or exported through it by another state, with unjust taxes and contributions. The merchandise of each state should be allowed a free passage through the jurisdiction of all the other states. But there would have been no security to the states of a free and uninterrupted trade, without a regulating power in the general government.

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what other objects does the power of congress to regulate foreign commerce extend ? § 299. For what purpose is the power over internal

§ 300. To what extent congress may exercise this power, has been a subject of controversy. It is conceded, that congress can have no control over commerce which is carried on between the citizens of a state, or between the different ports of the same state. But the power of congress extends to commerce *within* a state on waters communicating with the ocean, and waters which afford means of intercourse between several states. Acts of the legislature of New York, granting to individuals the exclusive right to navigate the waters of the state (Hudson river) in vessels propelled by steam, have been decided, by the supreme court of the United States, to be unconstitutional and void, and repugnant to the power of congress to regulate commerce, so far as they went to prohibit vessels licensed by the laws of congress to carry on the coasting trade, from navigating the waters of New York.

§ 301. The power to regulate commerce extends to conferring privileges upon vessels of the United States, engaged in the coasting trade and fisheries. *Coasting trade* is the trade carried on between one district and another in the United States, on the sea coast, or on navigable rivers. All vessels of twenty tons and upwards, being enrolled according to law, and having a license, are entitled to the privileges of vessels employed in the coasting trade or fisheries. Vessels of less burthen, having only a license, are entitled to the same privileges. No vessel enrolled and licensed for this trade, may proceed on a foreign voyage, without having given up her enrolment and license, and been registered conformably to the laws regulating vessels employed in foreign trade. If a vessel shall perform a foreign voyage without complying with this regulation, such vessel, with all her furniture, and goods imported therein, will be liable to seizure and forfeiture.

§ 302. The power of congress to regulate trade with the Indian tribes, extends to tribes within, as well as without the boundaries of the United States. It has been a subject of

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commerce necessary? § 300. In what cases may this power be exercised *within* a state? § 301. What is the *coasting trade*? What requisitions must be complied with to entitle vessels to the privileges conferred on vessels employed in this trade? § 302. Is the power to



dispute, whether the Indian tribes were to be regarded as *foreign nations* in their relations to the United States. It has been decided by the supreme court, that they are not recognized as such by the constitution : but they are to be considered as domestic, *dependent* nations, in a state of pupillage to the general government, and holding their territory by right of occupancy. This right of the Indians to their lands is acknowledged in the treaties made with them from time to time. By these treaties, the Indians place themselves under the protection of the general government, which guaranties to them the peaceable possession of their lands not ceded to the United States.

§ 303. By giving to the general government the power to regulate intercourse with the Indian tribes, it was intended to lessen the dangers of war. Hostilities on the part of the Indians had frequently been caused by the improper conduct of individual states. Difficulties would be more likely to be avoided by a uniform policy ; and when existing, would be more likely to be amicably settled by the general government, than by a state, which, being a party interested, would be more liable to misjudge the matter in dispute, as well as more unyielding in its demands of justice.

§ 304. Since the year 1830, a different policy from that previously practised, has been pursued by the general government towards the Indians, which has resulted in the almost entire removal of them beyond the limits of the United States

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## CHAPTER X.

### *Commerce continued.—Navigation.*

§ 305. NAVIGATION is the art or practice of conducting a ship from one port to another, and implies whatever relates

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regulate commerce with the Indian tribes limited to those within the boundaries of the United States ? Are they *foreign nations* ? § 303. Why was this power given to congress ? § 304. What has been the policy towards the Indians since 1830 ?

to traversing the water in ships or other vessels. In pursuance of the power to regulate commerce, congress has enacted laws conferring privileges upon ships built and owned in the United States, in order to encourage domestic navigation. This is done by imposing higher duties of tonnage and impost, upon foreign vessels and goods imported in them, than upon vessels of the United States and goods imported therein. These duties are called *discriminating duties*, because the law discriminates, or makes a distinction or difference between domestic and foreign navigation.

§ 306. By acts of 1790 and 1817, vessels of the United States, when entered in the United States from a foreign port or place, are made subject to a duty of six cents a ton ; but if the officers and two thirds at least of the crew of a vessel, be not citizens of the United States, fifty cents a ton shall be paid. On every such vessel, entered in a district in one state, from a district in another state, the duty is six cents ; but unless three fourths of the crew be American citizens the duty shall be fifty cents a ton.

§ 307. A higher duty is imposed on foreign than on American vessels. The above acts provide, that on vessels built within the United States, but which belong wholly or in part to subjects of foreign powers, a duty of thirty cents shall be paid ; on other vessels, fifty cents a ton. On foreign vessels entered in the United States from a foreign port at which American vessels are not ordinarily permitted to trade, there shall be paid a duty of two dollars a ton.

§ 308. Vessels of the United States, to be entitled to the privileges enjoyed by such ships or vessels, must be *registered* pursuant to the laws of the United States. After the admeasurement of a vessel by a surveyor, to ascertain her tonnage, the collector records or registers in a book kept for that purpose, the names of the vessel and the port to which she belongs, her burthen, the year and the name of the place in which she was built. A certificate of such registry is then given by the collector of the district to the owner or commander of the vessel, who is required to give

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§ 305. What is *navigation*? What are *discriminating duties*?

§ 306. What regulations exist as to the duties on American vessels?

§ 307. What are the duties on foreign vessels? § 308. What regula-

a bond with sureties, that the certificate of registry shall be used only for the vessel for which it is granted. If a certificate of registry be fraudulently used for any vessel not entitled to the benefit thereof, such vessel shall be forfeited to the United States.

§ 309. The master of a vessel departing from the United States, bound to a foreign port, is required to deliver to the collector of the district a manifest of all the cargo on board, and its value, by him subscribed and sworn to be true; whereupon the collector grants a *clearance* for the vessel, which is a certificate stating that the commander has cleared his vessel according to law.

§ 310. Every vessel of the United States going to a foreign country, shall, at the request of the master, be furnished with a passport, the form of which is to be prepared by the secretary of state, and approved by the president. A *passport* is a written license from the proper authority of a country, granting permission to pass from one country to another, or to navigate some sea without hindrance or molestation. It contains the name of the vessel and that of the master, her tonnage and the number of her crew, certifying that she belongs to the subjects of a particular state, and requiring all persons at peace with that state, to suffer her to proceed on her voyage without interruption.

§ 311. Passenger vessels are not permitted to carry a greater number of passengers than two for every five tons of their burthen. If the master or other person on board of a vessel of the United States, shall take on board at a foreign place, or bring into the United States; or if he shall transport from the United States to a foreign place, a greater number of passengers than two for every five tons of such vessel, according to the custom house measurement, he shall forfeit and pay one hundred and fifty dollars for every passenger above the number prescribed. If the number of passengers shall exceed such number by twenty, the vessel shall be forfeited to the United States. The master or cap-

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tions must be complied with to entitle United States vessels to the intended privileges? § 309. What is required of the master of a vessel departing for a foreign port? What is a *clearance*? § 310. When are passports granted? What is a *passport*? § 311. What restrictions

tain of a vessel is required to report to the collector a list or manifest of all the passengers, designating their age, sex, and occupation; the country to which they belong, and of which they intend to become residents; and the number, if any, that have died on the voyage.

§ 312. None but citizens or persons of color, natives of the United States, may be employed on board of a vessel of the United States. For every other person so employed, the commander forfeits one thousand dollars. The master of every vessel bound to a foreign place, or of every vessel of the burthen of one hundred and fifty tons or upwards, bound to a port in any other than an adjoining state, is required to make a written or printed agreement with every seaman or mariner employed on such vessel.

§ 313. Every vessel of the burthen of one hundred and fifty tons or upwards, navigated by one or more persons, and bound on a voyage beyond the limits of the United States, and all merchant vessels of the burthen of seventy-five tons or upwards, navigated by six or more persons, and bound to the West Indies, shall be provided with a chest of medicines accompanied with directions for administering them. Vessels crossing the Atlantic ocean, shall have on board at least sixty gallons of water, one hundred pounds of salted meat, and one hundred pounds of wholesome ship bread, for each person on board.

§ 314. A fund is provided for the relief of sick and disabled seamen, by requiring the master or owner of every vessel of the United States, before it shall be admitted to entry, to pay to the collector, at the rate of twenty cents a month for every seaman employed on board; which sum he may retain out of their wages. The fund thus provided, is administered by such persons as the president of the United States shall appoint for the purpose.

§ 315. The register, clearance, and other papers granted by the officers of the customs to a *foreign vessel*, at her departure from the port from which she shall have arrived, shall,

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are laid upon passenger vessels? § 312. What persons only may be employed on United States vessels? How must contracts be made with seamen? § 313. How must certain vessels be supplied? § 314. How is relief provided for sick and disabled seamen? § 315, 316. With

previously to her entry in a port of the United States, be produced to the collector with whom the entry is to be made. And it is the duty of the master, within forty-eight hours after such entry, to deposit such papers with the consul or vice consul of the nation to which the vessel belongs ; and to deliver to the collector the certificate of the consul or vice consul, that the papers have been so deposited. Any master who shall fail to comply with this regulation, shall be fined in a sum not less than five hundred, and not exceeding two thousand dollars. But this regulation does not extend to the vessels of foreign nations, in whose ports American consuls are not permitted to have the custody of the register and other papers of vessels entering the ports of such nations.

§ 316. No foreign consul may deliver to the master of any foreign vessel the register and other papers with him, until the master shall have produced to him a clearance from the collector of the port. For a violation of this law, the consul shall be fined in a sum not less than five hundred, nor exceeding five thousand dollars.

§ 317. Under the power to regulate commerce with foreign nations, congress may pass embargo and quarantine laws. *Embargo* means a stop put to trade ; or a prohibition of state, commonly on foreign ships, to prevent their going out of port or coming in. Before the war of 1812, a law of this kind was passed, (December, 1807.) In a case tried in the district court of Massachusetts, it was argued that the act was unconstitutional ; that congress had no right, under the power to regulate commerce, thus to *annihilate* it, by interdicting it entirely with foreign nations. The court decided that the act was constitutional. The power of congress relative to commercial intercourse is sovereign, except so far as it is qualified by the restrictions expressed in the constitution.

§ 318. *Quarantine* signifies the time during which a ship, suspected of having contagious sickness on board, is forbid-

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what regulations must foreign vessels comply on entering our ports ?  
§ 317. What is an *embargo* ? When was an embargo law passed ?  
§ 318. What is the meaning of *quarantine* ? How has congress regulated quarantines ?

den to have intercourse with the place where she arrives. The term is derived from the Italian *quarantina*, meaning the space of forty days, that being originally the period fixed for detaining ships in such circumstances. But the time now varies according to the circumstances of the case. Quarantines are required by the health laws of the states: and congress has enacted, that all vessels, whether from a foreign port, or from another district in the United States, and all revenue officers, shall be subject to the health laws of the state to whose ports such vessels shall be bound. And the president may direct suitable houses to be purchased or erected, in which goods may be landed from vessels subject to quarantine, at such other place in the state, as the safety of the revenue, and the observance of the health laws, may require.

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## CHAPTER XI.

### *Naturalization of Aliens—Bankruptcy.*

§ 319. CONGRESS shall have power, "To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States."—*Art. 1, sec. 8, cl. 4.*

§ 320. The evil to be apprehended from the immediate admission of foreigners to the privileges of citizens upon their arrival in this country, has already been the subject of remark. (§ 201.) Many of them having been educated under monarchical governments, can hardly be supposed to have much respect for republican institutions. At best, they can have but an imperfect knowledge of them. To intrust such persons with all the rights of native citizens, would be inexpedient and even dangerous. If they be ignorant, they may be deceived or misled; if poor and vicious, their votes may be bought. They are liable thus to become the dupes

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§ 319. What power has congress respecting naturalization and bankruptcy? § 320. Why ought not foreigners to be immediately al-

or tools of unprincipled politicians, who, by their aid, may be raised into power.

§ 321. But when foreigners shall have acquired a permanent residence here, and their interests shall have become identified with the interests of our citizens, it would be illiberal, if not unjust, to deny them equal privileges in the country of their adoption. Provision has therefore been made for removing the disqualifications of aliens, by naturalization. *Naturalization* is the investing of an alien with the rights and privileges of a native citizen.

§ 322. The power to make laws for naturalizing aliens, is given to congress, that they may be uniform throughout the United States. The adoption of different rules of naturalization in the several states, would be attended with great inconvenience and difficulty. A naturalized citizen, on removing into another state, would be deprived of all his political rights, until he should have undergone the process of naturalization by the laws of such state. Or if, as is now provided by another clause of the constitution, the citizens of each state were entitled to the privileges of citizens in all the states, the objects of the naturalization laws of one state might be defeated by those of others. Hence the propriety of vesting this power in congress.

§ 323. The constitution, while it provides for naturalizing aliens, does not define the character either of citizens or of aliens. In the absence of such definition, reference must be had to the English common law. In the United States, an *alien* may be defined to be a person born out of the jurisdiction of the country, and not having acquired the rights of naturalization. To this rule there is, however, an exception. In accordance with the principle of the English law, the right of citizenship is given by the act of congress of 1802, to children born out of the jurisdiction of the United States, of persons who are citizens of the United States; such, for instance, are the children of public ministers born during the residence of their parents in a foreign country.

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lowed the privileges of citizens? § 321. By what process may they become citizens? What is naturalization? § 322. Why is the power to make laws for this purpose given to congress? § 323. Who are

§ 324. By the adoption of the constitution, the citizens of each state were made citizens of the United States ; for all who were not *native citizens*, citizens born within the United States, acquired the rights of *naturalized citizens*, by assuming allegiance to the government. Aliens can acquire no title to real estate. Should they purchase it, it is forfeited to the state whenever it is ascertained by proper examination to be the property of an alien. But aliens do sometimes own real property, holding it in the name of a friend. They may own and transmit personal or moveable property in the same manner as citizens ; and they may bring suits for the recovery and protection of such property. In the state of New York, it is provided, that a resident alien of that state, may hold real estate, after he shall have filed in the office of the secretary of state, a certain deposition as to his intended residence and naturalization ; but he cannot lease or demise the same, until he becomes naturalized.

§ 325. An alien, to become a citizen of the United States, must declare on oath, before a court of some one of the states, or a circuit court of the United States, or before a clerk of either of said courts, two years before his admission, that it is his intention to become a citizen, and to renounce all allegiance to any foreign state or sovereignty, and particularly, by name, that whereof he is a citizen or subject. And he must, at the time of his application, declare on oath before one of the said courts, that he will support the constitution of the United States. At the expiration of two years, he shall, on application of the court, be admitted as a citizen ; provided the court admitting such alien shall be satisfied that he has resided within the United States five years at least, and within the state or territory in which such court is at the time held, one year at least ; and that, during that time, he has behaved as a man of good moral character, attached to the principles of the constitution, and well disposed to the good order and happiness of the United States. But the oath of the applicant is not allowed to prove his residence.

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*aliens* in this country? What exception to this rule? § 324. Of what privileges are aliens destitute? § 325. To become a citizen,



§ 326. By the act of 1824, an *alien minor* may be admitted a citizen at any time after he shall have arrived at the age of twenty-one years, if he shall have resided five years in the United States, including at least three years of his minority, without having made a previous declaration of his intention to become a citizen. It is sufficient that the declaration be made at the time of his admission; provided that he then declare on oath, and prove to the satisfaction of the court, that, for three years next preceding, it has been his intention to become a citizen; and that he comply, in all other respects, with the laws in regard to naturalization.

§ 327. By the act of 1828, an alien who resided in the United States before the 18th June, 1812, and who continues to reside here, need not previously declare his intention to become a citizen; provided that he prove to the satisfaction of the court, that he was residing in the United States before the 18th June, 1812, and that he has continued to reside here; and provided also that his residence be proved by the oath or affidavit of citizens of the United States. If the alien shall have arrived after the peace of 1815, his residence must have been continued for five years next preceding his admission, without having been, at any time during the five years, out of the territory of the United States.

§ 328. Children of persons duly naturalized, being minors at that time, shall, if dwelling in the United States, be deemed citizens. And if an alien shall die after his declaration, and before his actual admission, his widow and children shall be deemed citizens.

§ 329. The other power expressed in this clause of the constitution, is that of establishing uniform bankrupt laws. The word *bankrupt* is derived from *bancus*, a bench, and *ruptus*, broken, in allusion to the benches formerly used by money lenders in Italy, which were broken or destroyed in

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what declarations must he make before and at the time of his admission? On what conditions is he then admitted? § 326. On what terms are alien minors admitted? § 327. What are the provisions of the act of 1828? § 328. What in regard to widows and children? § 329. What is the meaning of *bankrupt*, and insolvent and bank-

case of failure. This word generally means an insolvent person, but more strictly, an insolvent merchant. A distinction has been made by some between insolvent laws and bankrupt laws; the latter providing for discharging the debtor from his contracts, the former merely liberating his person from imprisonment.

§ 330. These laws are founded in principles of humanity and justice, being designed for the relief of unfortunate debtors, who could never hope to rise from a state of poverty, without a release from their debts; and also for the benefit of creditors, by securing to them the effects of their bankrupt or insolvent debtors. The power to make these laws is with propriety intrusted to congress. The dissimilar and conflicting laws of the different states, and the entire want of them in some states, had caused much inconvenience. Debtors, though discharged from debts in one state, were still liable to prosecution and imprisonment on removing into another state.

§ 331. As the constitution prohibits the states from passing laws impairing the obligation of contracts, the right of a state to pass insolvent or bankrupt laws is questioned by many, who maintain that such laws impair the obligation of contracts; or that, as the power is given to congress to establish a uniform system of bankruptcy, the states are thereby deprived of the power to make insolvent laws.

§ 332. From decisions which have been made by the supreme court of the United States, it appears, (1.) That a state has no authority to pass an insolvent or bankrupt law, to discharge a debtor from the obligation of a contract made before such law was passed. But if the law existed before a contract was made, it did not, in the sense of the constitution, impair the obligation of that contract; because parties are presumed to have reference to the existing laws of the country when such contract is made. (2.) That, until congress establish a uniform system of bankruptcy, a state may pass such insolvent laws as do not impair the obligation of contracts. (3.) That a discharge is valid only between

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rupt laws? § 330. What is the object of these laws? Why is the power to make them given to congress? § 331, 332, 333. What legal opinions have been given respecting the right of states to pass

the citizens of the state by which such law was passed ; and that a debtor, if he should remove into another state, and there take the benefit of an insolvent law, is not discharged from debts contracted before his removal.

§ 333. In view of the judicial decisions on this subject, chancellor Kent observes : “ It remains yet to be settled, whether it be lawful for a state to pass an insolvent law, which shall be effectual to discharge the debtor from a debt contracted after the passing of the act, and within the state making the law. The general language of the court would seem to reach even this case ; but the facts in the cases decided do not cover this ground, and are not authority to that extent.”

§ 334. Congress has heretofore, (April, 1800,) exercised its power to pass bankrupt laws ; but the law enacted was repealed in December, 1803. There is no existing law of congress on the subject.

## CHAPTER XII.

### *Money—Weights and Measures.*

§ 335. CONGRESS shall have power, “ To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.”—*Art. 1, sec. 8, cl. 5.*

§ 336. Were each state permitted to coin money and affix to it such value as it pleased, the varying standards established by different states would render trade between the states extremely embarrassing. To produce a uniform standard of value in coin, exclusive power over the currency was given to congress.

§ 337. The word *coin*, (French,) means a stamp, or money stamped with a legal impression. Coining, until the

insolvent laws ? § 334. Is there any law of congress on this subject ?

§ 336. Why is the power to coin money and regulate its value given to congress ? § 337, 338. What is the meaning of coin ?

last two or three centuries, was very imperfectly performed, by placing the blank piece of money between two dies, or steel punches containing the design or figure of the coin, and striking upon the upper one with a hammer. The imperfection of this hammer money was caused by the uncertainty of placing the two dies exactly over each other, and the improbability of a man's being able to strike a blow with such force as to make all parts of the impression equally perfect.

§ 338. The coining press, or mill, now used, was invented in France. The bars or ingots of gold or silver, after having been cast, are taken out of the moulds, and their surfaces cleaned. They are then flattened by rollers, and reduced to the proper thickness to suit the species of money to be coined. The plates are next cut out into round pieces by a circular steel punch of the size of the coin, which is driven downward by a powerful screw, and passes through a corresponding circular hole, carrying before it the piece of metal which is punched out. These pieces are brought to the standard weight, if necessary, by filing or rasping: the deficient pieces, together with the corners and pieces of the plates, are returned to the melter. The inscription or impression on the edge is made by rolling the coin, edgewise, between two plates of steel containing the engraved edging. The stamping is performed by pressing the piece with a powerful screw between two steel dies, on which the figure to be impressed is engraved.

§ 339. The place where money is coined by public authority, is called the *mint*. The officers and persons who conduct the business of the mint of the United States, are a director, a treasurer, an assayer, a chief coiner, an engraver, and a melter and refiner. The *director*, with the approbation of the president of the United States, employs the necessary clerks and workmen, and has the chief management of the business of the mint. The *treasurer* receives the metals brought to be coined, and gives receipts for them. The *assayer* receives from the treasurer a sufficient number of grains of every parcel, and assays them. This is a pro-

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Describe the coining process. § 339. What is *mint*? What is the business of the director, treasurer, and assayer? What is *alloy*?

cess to ascertain the quantity of gold or silver in the alloy. *Alloy* is a composition formed by the combination of two or more metals. To alloy means to mix a metal of less with one of greater value. The baser metals are used to alloy gold and silver coins, to prevent their loss by wear.

§ 340. The treasurer delivers the assayed metals to the chief coiner, from whom he receives them when struck, and pays or delivers them to the persons to whom they are to be delivered. He also keeps all moneys for the support of the mint, and pays them out upon warrants signed by the director. The *chief coiner* causes to be coined all metals received by him for that purpose. The *engraver* sinks and prepares the dies with the proper devices and inscriptions. The *melter* and *refiner* takes charge of all copper, or silver and gold bullion delivered out by the treasurer after it has been assayed, and reduces them into bars or ingots fit for the rolling mills. *Bullion* is uncoined gold or silver in plates, bars, or masses.

§ 341. The proportional value of gold to that of silver coins by law current as money in the United States was formerly as fifteen to one; that is, fifteen pounds of pure silver were equal in value to one pound of pure gold. But in 1834, congress by law changed the proportional and standard values. The present value of gold coins of the United States is as sixteen to one of silver. The value of the eagle of the old coinage is consequently about \$10,66; and the new eagle contains a quantity of gold only that was before valued at about \$9,38. Foreign gold coins are made lawful, according to their real value, by the same standard with our own. The dollars of Spain, Mexico, and the South American states, are lawful at the same value with our own dollars. The five franc pieces of France are lawful at 93 cents each.

§ 342. Congress shall have power, "To provide for the punishment of counterfeiting the securities and current coin of the United States."—*Art. 1, sec. 8, cl. 6.*

§ 343. The power to coin money would be of little use

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§ 340. What is the business of the chief coiner, engraver, and melter and refiner? What is *bullion*? § 341. What was formerly, and what is at present, the standard value of coin? § 342, 343. Why is the

without the power to provide for the punishment of counterfeiting it; and although this power might be reasonably considered as implied in the power to coin money, it is with propriety granted by express provision.

§ 344. The counterfeiting and debasing of current coin are deemed aggravated offences, and are punished with heavy penalties. Any person who shall falsely make, or fraudulently pass, any coin in resemblance of the gold or silver coin of the United States, shall be liable to a fine not exceeding five thousand dollars, and imprisonment not exceeding ten years, according to the aggravation of the offence. For falsifying or lightening any gold or silver coin in actual use as money, the penalty is imprisonment not exceeding two years, and fine not exceeding two thousand dollars. For counterfeiting copper coin, a fine not exceeding one thousand dollars, and imprisonment not exceeding three years.

§ 345. Any officer or person employed at the mint of the United States, who shall debase or make worse any gold or silver coin, as to the proportion of fine gold or fine silver, or shall make the same of less weight or value than it ought to be, with a fraudulent intent, or shall embezzle any of the metals left at the mint to be coined, shall be guilty of felony, and imprisoned not less than one year, nor more than ten years, and fined not exceeding ten thousand dollars.

§ 346. Fines and penalties similar to the above are inflicted upon persons who counterfeit or forge any public security, treasury note, deed, power of attorney, certificate of public stock, or other writing relative to the business of the United States.

§ 347. The exclusive power to fix the standard of *weights and measures* is properly given to congress, in order to ensure uniformity throughout the United States: that body has not yet legislated on the subject. Each state, therefore, retains the right to adopt and regulate its own standard.

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power to punish counterfeiting necessary? § 344, 345. What is the penalty for counterfeiting and debasing coin? § 346. What other species of counterfeiting is punishable? § 347. Has congress exercised its power to fix the standard of weights and measures?

## CHAPTER XIII.

*Post Offices and Post Roads.*

§ 348. CONGRESS shall have power, "To establish post offices and post roads."—*Art. 1, sec. 8, cl. 7.*

§ 349. The vast importance of a general and rapid circulation of intelligence among the people, and the utility of the post office in aiding the government to perform its business operations in all parts of the union with economy and despatch, rendered some provision necessary to facilitate the transportation of the mail. The propriety of intrusting the sole regulation of the post office department to the general government, is manifest. Indeed, it is impossible to conceive how a business so complicated could be managed by the states.

§ 350. It is the opinion of some, that the power to establish post offices and post roads is limited to the power of establishing post routes, or pointing out the roads on which the mails are to be carried, of directing where post offices shall be kept, and of appointing postmasters. The more probable opinion is, that congress may also make or repair roads wherever or whenever the same shall be necessary for the conveyance of the mail. This necessity, however, can rarely occur, as roads are seldom wanting where there are people to be accommodated by mails.

§ 351. A general post office was established by the colonial congress, as early as the year 1775. The laws by which it has been regulated have been changed, from time to time, as improvements were suggested, and as the increase of its business demanded. The business of the general post office is under the supervision of a *postmaster general*. This officer is at present considered a member of the president's cabinet, and the general post office an auxiliary executive department.

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§ 348, 349. What is the use of the power to establish post offices?  
§ 350. What opinions prevail respecting the extent of this power?  
§ 351. When was the general post office established? What is the chief officer called? § 352. What are his principal duties? § 353

§ 352. The postmaster general establishes post offices, appoints postmasters and other persons employed in the several departments of the general post office, and gives instructions relative to their duties. He provides for carrying the mail on all post roads as often as he may think proper, and directs the revenues arising in the department, and all debts due the same, to be paid into the treasury of the United States. And it is his duty to make to congress, at each annual session, a report of all contracts made for the transportation of the mail the preceding year, and reports of the expenditures and receipts of the department.

§ 353. The postmaster general is assisted by three assistant postmasters general, and such number of clerks as the business of the department may require; and an auditor of the treasury of the post office department, who is appointed by the president and senate, and whose duty it is to receive all accounts arising in the department, and to audit and settle the same, and to superintend the collection of the debts due the department.

§ 354. Contracts for the transportation of the mails are made as follows:

The postmaster general gives twelve weeks' previous notice, in one newspaper published at the seat of government, and in one or more in the state in which the contracts are to be made for transporting the mail, that such contracts are to be made. Those who wish to engage to transport the mails on any of the routes advertised, send their proposals to the postmaster general, stating the lowest sum for which they will agree to carry the mail. He that proposes to carry for the least sum has the contract.

§ 355. The rates at which letters, newspapers, pamphlets, and magazines are carried by mail, are established by law, and are as follows:

For every letter composed of a single sheet of paper, not exceeding thirty miles, six cents; over thirty, not exceeding eighty miles, ten cents; over eighty, not exceeding one hundred and fifty miles, twelve and a half cents; over one hundred and fifty, not exceeding four hundred miles, eighteen

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What assistance does he receive? § 354. How are contracts made for transporting the mail? § 355. What are the rates of postage on



cents and three fourths; over four hundred miles, twenty-five cents. For every double letter, or letter composed of two pieces of paper, double those rates; for every triple letter, three times those rates; for every packet of four or more pieces of paper, and weighing one ounce, four times those rates; and in proportion for all greater weights. No packet of letters transported by water mails, are charged with more than quadruple postage, unless the same shall contain more than four letters; and no postmaster may put into the mail any packet of more than three pounds weight.

§ 356. Every four folio pages, or eight quarto, or sixteen octavo, or twenty-four duodecimo pages, or pages of less size than that of a pamphlet or magazine, are considered a sheet. The rates of postage on newspapers, pamphlets, and magazines, are as follows:

On every newspaper carried any distance within the state, the postage is one cent; if carried over one hundred miles, and out of the state in which it is mailed, one cent and a half. On periodical pamphlets and magazines, such as are issued in numbers at regular intervals, carried not over one hundred miles, one and a half cents a sheet; over one hundred miles, two and a half cents.

§ 357. Any memorandum or writing on a newspaper transmitted by mail, is charged with letter postage. But the publisher of a newspaper may send a printed or written notice to a subscriber, stating the amount due on his subscription; for which notice there shall be charged the same postage as for a newspaper.

§ 358. The following officers are allowed to send and receive their letters and packets free of postage:

Every postmaster, provided each of his letters or packets shall not exceed half an ounce in weight; every member of congress, provided each letter or pamphlet, (except documents printed by order of congress,) shall not exceed two ounces, during his attendance in any session of congress, and sixty days before and after such session; and all the civil officers at the seat of government: and each may re-

letters? § 356. What on newspapers, pamphlets, and magazines? § 357. What concerning a writing on a newspaper? § 358. What officers are exempt from paying postage? To what extent? What is

ceive a newspaper free of postage, provided that no postmaster shall receive, free of postage, more than one daily newspaper, or what is equivalent thereto; and that no member of congress shall receive newspapers, free of postage, after his privilege of franking shall have ceased. To *frank* means to exempt a letter or packet from postage. The person entitled to this privilege, writes on the outside of the letter or packet, his name and office; and the same is sent free.

Every printer of a newspaper may send one newspaper to every other printer of a newspaper, free of postage.

§ 359. At the end of every quarter, every postmaster is required to publish in a newspaper, at or nearest the place of his residence, for three weeks successively, a list of all the letters remaining in his office; or shall cause a number of such lists to be posted up in his vicinity: and he is required, at the expiration of the next three months, to send such of the said letters as then remain on hand, as *dead* letters, to the general post office, where they are opened and examined; and such of them as are found to contain any matter of value, are returned to the writers thereof.

§ 360. Postmasters are allowed as a compensation for their services, a commission on letter postages by them received, not exceeding the following rates on the amount received in one quarter:

On a sum not exceeding one hundred dollars, thirty per cent.; on any sum over and above the first hundred dollars, not exceeding four hundred, twenty-five pr. ct.; on any sum over and above the first four hundred dollars, not exceeding two thousand four hundred, twenty per cent.: on any sum over and above the first two thousand four hundred dollars, eight per cent.; on moneys received for the postage of newspapers, magazines, and pamphlets, fifty per cent. Postmasters whose compensation does not exceed five hundred dollars a quarter, are allowed two cents for every free letter delivered out of their offices.

§ 361. Any postmaster who shall unlawfully detain in his

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*franking*? How is it done? § 359. What is done by postmasters at the end of each quarter? § 360. What compensation do postmasters receive? § 361. What is the penalty for detaining letters, &c.? What are the salaries of the chief officers of the department?

office any letter or paper, or give a preference to any letter or paper over another, by forwarding the one and retaining the other, shall be liable to a fine not exceeding five hundred dollars, and imprisonment for a term not exceeding six months, and incapable, for ever thereafter, of holding the office of postmaster in the United States. The salary of the postmaster general is \$6,000 a year ; three assistants, each \$2,500 ; auditor, \$3,000.

## CHAPTER XIV.

### *Patents and Copy Rights.*

§ 362. Congress shall have power, "To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right of their respective writings and discoveries."—*Art. 1, sec. 8, cl. 8.*

§ 363. The utility of this power is universally admitted. It is but just that those who spend their time in preparing books for the public, or in making useful discoveries, should receive a due reward for their labors. But this they could not receive, if all other persons had an equal right to use and sell their works and inventions. But the benefits of this provision are not confined to the authors and inventors. Discoveries and improvements in the arts and sciences, from which the world has derived the greatest advantages, would probably never have been made, had not encouragement been given to genius, by securing to inventors the profits of their discoveries.

§ 364. The right of property of authors and inventors in their works, had, before the revolution, been decided to be a common law right, and had been secured to them for limited times, by acts of parliament. Under the confederation, some of the states had, by legislative acts, favored certain discov-

§ 362. What power has congress to grant exclusive rights ? § 363.  
What is the utility of this power ? Why given to congress ? § 364.

eries ; but as the effect of these laws did not extend beyond the limits of the states in which they were enacted, little benefit was derived from them.

§ 365. There is attached to the department of state, an office denominated the *patent office*, the chief officer of which is called the *commissioner of patents*, appointed by the president and senate. It is the duty of this officer, under the direction of the secretary of state, to superintend the granting of patents and other business done in the office. The salary of the commissioner is \$3,000 a year. The commissioner appoints, with the approval of the secretary of state, a chief clerk, at a salary of \$1,700, on whom devolve the duties of the commissioner in his absence. The commissioner may also appoint, in the same manner, other necessary clerks.

§ 366. To secure an exclusive right to make, use, and sell any new and useful invention, the inventor must deliver to the commissioner of patents, a written description of the invention for which he desires to obtain the right ; and if it be a machine, it must be accompanied with drawings and written explanations of the principle, and the modes of the application of that principle, by which it may be distinguished from other inventions ; and he must specify particularly the improvement or combination which he claims as his own invention or discovery. In cases which admit of it, a model of the invention must also be furnished ; and the applicant must swear or affirm, that he believes that he is the true discoverer of the art or improvement for which he asks a patent, and that the same has not to his knowledge been known or used ; and also of what country he is a citizen.

§ 367. Every inventor, before his petition is considered, must pay into the treasury, or into the patent office, the sum of thirty dollars, if he be a citizen of the United States ; if a subject of Great Britain, five hundred dollars ; and all other persons, three hundred dollars. The commissioner then makes, or causes to be made, an examination of the alleged new invention ; and if it shall not appear that the same had been before discovered, he issues a patent therefor. But

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How was it exercised formerly ? § 365. How is the patent office organized ? Salaries of officers ? § 366. What must be done to procure a right for an invention ? § 367. How much must be paid ? On what

if it shall appear that the applicant be not the original inventor, or that the description is defective, he shall inform the applicant, who may withdraw his application, relinquishing his claim to the model, and receive back twenty dollars. But if the applicant shall persist in his claim, he may, by paying to the credit of the treasury as before, twenty-five dollars, have a decision of a board of examiners, composed of three disinterested persons, to be appointed by the secretary of state ; by which decision the commissioner shall be governed.

§ 368. Patents are granted for the term of fourteen years ; and it is provided, that, by paying forty dollars to the credit of the treasury, the applicant may have the hearing of a board, consisting of the commissioner, the secretary of state, and the solicitor of the treasury, who may extend the patent for the farther term of seven years, provided it shall be made to appear that the patentee, without neglect or fault on his part, has failed to obtain a reasonable profit from his invention. But before the said board shall sit for this purpose, the commissioner shall cause to be duly published, in one or more newspapers in the city of Washington, and in one or more papers in the section of country most interested adversely to the extension of the patent, a notice of the application, and of the time and place of the sitting of the board, that any person may appear and show cause why the extension of the patent ought not be granted.

§ 369. Any person who shall make, use, or sell any invention, the right of which is secured to a patentee, shall forfeit a sum, not exceeding three times the amount of damages actually sustained. But if it shall be proved by the defendant, that there was in the specification any false statement made to deceive the public ; or that the thing thus secured was not first discovered by the patentee ; or that the patent was surreptitiously obtained for the discovery of another person, judgment shall be rendered for the defendant. Prosecutions for violations of patents and copy rights, must be made in the circuit courts of the United States.

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conditions is it then granted ; and by whom ? § 368. For how many years ? On what conditions may the right be extended for seven years ? § 369. What is the penalty for infringing a right ? § 370,

§ 370. To secure the exclusive right to print and sell any *book, map, or chart*, the author or proprietor is required to deposit a printed title thereof in the clerk's office of the district court of the district in which the author or proprietor resides. The clerk records the title in a book kept for that purpose, and gives to the author, under the seal of the court, a copy of the record; for which record the clerk is entitled to fifty cents, and the like sum for every copy, under seal, given to the author or proprietor, or his assigns. The clerk is required to transmit, every year, to the secretary of state of the United States, a list of all copy rights deposited in his office.

§ 371. The author or proprietor must, within three months after the publication of the book, map, or chart, deliver a copy of the same to the clerk of the district court. He must also cause to be printed on the title page, or page immediately following, of every copy of the said book, if it be a book, or if it be a map or chart, on the face thereof, the following words: "Entered according to act of congress, " in the year        by        in the clerk's office of the " the district court of        ."

§ 372. At the expiration of the term for which a copy right shall have been secured, which is in all cases twenty-eight years, such right shall be continued for the farther term of fourteen years, provided the title of the work be again recorded, and all other regulations with regard to original copy rights be complied with, within six months before the expiration of the first term. And the author or proprietor must, within two months after the renewal, cause a copy of the record to be published in one or more newspapers printed in the United States, for the space of four weeks.

§ 373. If any other person, after the title of a book, map, chart, or engraving shall have been duly recorded and published, shall cause the same to be printed or published, without the consent of the author in writing, signed in the presence of two or more witnesses, the offender shall forfeit

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371. Describe the manner of obtaining copy rights for books, maps, and charts. § 372. For how long a term are copy rights granted? How, and for what term renewed? § 373. What is the penalty for

every copy of the same to the author or proprietor ; and he shall farther forfeit, if it be a book, fifty cents, or if it be a map, chart, or engraving, one dollar, for every sheet found in his possession, or printed, or exposed to sale ; one half thereof to the proprietor who shall sue for the same, and the other half to the United States. Any person who shall print or publish the manuscript of an author or proprietor, without his consent, as before mentioned, shall be liable to the author for all damages sustained by the injury.

§ 374. If any person printing or publishing a book, shall print therein that the same has been entered according to act of congress, without having legally acquired a copy right, he shall forfeit one hundred dollars.

§ 375. Patents and copy rights may be assigned and transferred to others ; and the assignees have all the rights secured to the original parties. But every grant and conveyance of a right to an invention, must be recorded in the patent office, within three months from the execution thereof ; for which the commissioner shall receive three dollars. Assignments of copy rights must be recorded in the offices whence they were issued. Rights may be obtained by the heirs of inventors who have died before the rights were obtained.

§ 376. Congress shall have power, "To constitute tribunals inferior to the supreme court."—*Art. 1, sec. 8, cl. 9.*

[For the organization and jurisdiction of these tribunals, see Judicial Department. The clause is inserted here merely to exhibit the several clauses of this section of the constitution in unbroken order.]

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a violation of the law ? § 375. How may rights be assigned and transferred ?



## CHAPTER XV.

*Piracies, Felonies, and Offences against the Law of Nations.*

§ 377. CONGRESS shall have power, "To define and punish piracies and felonies committed on the high seas, and offences against the law of nations."—*Art. 1, sec. 8. cl. 10.*

§ 378. Our citizens are recognized, by foreign nations, as citizens of the United States, and not as citizens of the states, and consequently, as the general government, and not a state, is responsible to foreign nations for injuries committed on the high seas, by any citizen of the United States, this power is granted to congress. Besides, no single state is able to protect its commerce.

§ 379. The power to define felonies is especially requisite in the national government. The term *felony* was not exactly defined by the common and statute laws of England; and its meaning was various in the different states. It was sometimes applied to capital offences; at others to such as were by the common law punished by forfeiture of goods and lands. For the sake of uniformity, therefore, the power to define as well as punish offences on the seas, was given to congress.

§ 380. *Piracy* is the crime of robbery and depredation committed upon the high seas. As it is an offence against the law of nations, every nation has a right to attack and exterminate pirates, without any declaration of war. *High seas*, under the statute, comprehends an open roadstead, though vessels lie in it under the shelter of the land, at a season when the course of the wind is invariable; and also any waters on the sea coast, without the boundaries of low water mark, though such waters are in a roadstead or bay, within the jurisdictional limits of a foreign government.

§ 381. By the laws of the United States, if a person

§ 377, 378. Why ought congress to have the power to punish these offences? § 379. Why is the power to define felony necessary? What is *felony*? § 380. What is *piracy*? What is meant by *high seas*? § 381. What offences on the sea are piracy? § 382, 383.



commit, upon the high seas, out of the jurisdiction of a state, murder or robbery, or any other offence which, if committed in the body of a county, would, by the laws of the United States, be punishable with death, he shall be adjudged a pirate and felon, and punished with death. And if a captain or mariner of any vessel feloniously run away with the vessel, or any goods or merchandize to the value of fifty dollars, or shall yield up a vessel voluntarily to pirates; or if a seaman lay violent hands upon his commander, to prevent him from defending the ship or goods committed to his trust, or make a revolt in the ship; every such offender shall be adjudged a pirate and felon, and suffer death.

§ 382. The African slave trade, which was tolerated for many years after the constitution was adopted, was, in 1820, declared piracy. The transportation of slaves *from* the United States, by citizens thereof, to any foreign country, was prohibited by acts of 1794 and 1800. But as the importation of slaves was allowed by the constitution until 1808, no law against their importation could be passed to take effect before that time.

§ 383. A law was enacted in 1807, making it unlawful, under severe penalties, to import slaves into the United States. And laws were from time to time enacted, for the effectual suppression of the trade. By the law of 1820, it was provided, that, if any person whatever, being of the crew of any vessel armed or navigated for or on behalf of a citizen of the United States, or owned in whole or in part by a citizen of the United States, shall land on a foreign shore, and seize a negro or mulatto, with intent to make him a slave, or shall decoy or forcibly bring such negro on board such vessel, he shall be adjudged a pirate, and suffer death.

§ 384. If a person upon the high seas shall murder, or otherwise so injure any other person that he shall afterwards die upon the land, the offender shall be punishable with death. If a person shall wilfully destroy, or aid in destroying, a vessel of war of the United States on the high seas;

or if, being the owner of a vessel, he shall corruptly cast away, or aid in destroying the same, with a design to prejudice any person that has underwritten a policy of insurance, he shall suffer death. For maliciously attacking a vessel with intent to plunder the same, the offender shall be punished by a fine not exceeding five thousand dollars, and imprisonment not exceeding ten years. Numerous other crimes on the high seas are punishable by fine and imprisonment, in proportion to the aggravation of the offence.

§ 385. If a person, within a fort, arsenal, navy yard, or magazine, shall burn a dwelling house, store, barn, or other building, he shall be punishable with death. Sundry other crimes, if committed within any territory under jurisdiction of the general government, are punishable with fine and imprisonment.

§ 386. *Offences against the law of nations* are, besides piracy, violations of safe conducts or passports, and infringements of the rights of ambassadors and other foreign ministers. A *safe conduct* contains a pledge of the public faith, that it shall be duly respected; and the observance of this duty is essential to the character of the government that grants it. An ambassador cannot be made answerable in a court of justice. If he commit an offence, he must be sent home to be punished by the laws of his own country.

§ 387. The statute law of the United States provides, in furthering the general sanction of the public law, that persons who violate passports shall be imprisoned, not exceeding three years, and fined at the discretion of the court. The like punishment is inflicted upon persons who infringe the law of nations, by offering violence to public ministers, by being concerned in prosecuting or arresting them. This is an offence highly injurious to the free and liberal intercourse between different governments, and may prove mischievous in its consequences to a nation, as it tends to provoke the sovereign whom the minister represents, and to bring upon the country the calamity of war.

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on the high seas are punished by fine and imprisonment? § 385. What crimes on land are punishable by death? § 386. What are offences against the law of nations? What is a *safe conduct*? How are ambassadors punished? § 387. What is the penalty for violating passports, and offering violence to public ministers?

## CHAPTER XVI.

*Declaration of War—Marque and Reprisal—Captures—Army and Navy.*

§ 388. CONGRESS shall have power, "To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water."—*Art. 1, sec. 8, cl. 11.*

§ 389. That self-preservation, or the right of self-defence, is the first law of nature, is a principle that has received the general assent of mankind. It is upon this principle that nations justify themselves in resisting the aggressions of other nations. Accordingly the power has been given to congress to declare war. A just defence, or making use of force against any power that attacks a nation or its privileges, is *defensive* war. To obtain justice by force, if it cannot be otherwise obtained, or to pursue our right by force of arms, is *offensive* war.

§ 390. But there are cases which, by the law of nations, constitute justifiable causes of war, when neither good policy nor the honor of a nation requires such a measure. War is at all times productive of great evils; and both wisdom and humanity forbid a recourse to war to redress wrongs in ordinary cases. The true honor and dignity of a nation are not most effectually sustained by a resort to arms upon every occasion of even real injury.

§ 391. The power to declare war is, in some countries, exercised by the supreme ruler. But this is too vast a power to be safely intrusted to a single individual, who, from a mistaken sense of national honor, or from selfish motives, may expose the lives and liberties of a whole people. In the United States this power is committed to the representatives of those who have to bear the burthens of war.

§ 392. The power of issuing letters of marque and re-

§ 388, 389. On what principle is the war power founded? What is *offensive* war? § 390. Should war always be resorted to on occasions of injury? § 391. Why is the power to declare war given to congress? § 392. What means *marque* and *reprisal*? § 393, 394. What

prisal also is given to congress. *Marque* signifies passing the frontier; reprisal, the taking in return. Letters of marque and reprisal are a license given to the subjects of one nation who have been injured by those of another nation, to seize the bodies or goods of the citizens of such offending nation wheresoever they may be found, until satisfaction be made. This measure is sometimes taken to prevent the necessity of a resort to war to obtain satisfaction for injuries; but its natural tendency is to provoke open hostilities between nations, rather than to prevent them. Were each individual permitted to act as judge in his own case, in redressing his private wrongs, the dangers of war would be increased: the power, therefore, is properly vested in congress.

§ 393. Connected with the power of declaring war, is the power to make rules concerning *captures*. By the law of nations, no individual has any interest in a prize, whether made by a public or private armed vessel, but what he receives under the grant of the government. The general practice is to distribute the proceeds of the captured property, when duly passed upon and condemned as a prize, among the captors as a reward for bravery and a stimulus to exertion. But the courts have no power of condemnation till the legislative will be expressly declared.

§ 394. The district courts of the United States have cognizance of complaints in cases of capture made within the United States, or within a marine league of the coast or shore thereof. They have exclusive cognizance of all seizures on land, and on waters other than those navigable by vessels of ten or more tons burthen, within their respective districts, or on the high seas. War gives a nation the right to take the persons, and confiscate the property of the enemy, wheresoever they may be found.

§ 395. Congress shall have power, "To raise and support armies; but no appropriation of money for that use shall be for a longer term than two years."—*Art. 1, sec. 8, cl. 12.*

§ 396. The want of power in congress to raise troops

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are *captures*? How is captured property disposed of? § 395. How is the power of congress to support armies limited? § 396. Why is the

was, as has been remarked, one of the principal defects of the confederation. Congress could declare war; but it had not the power to compel the states to comply with its requisitions for men and money to carry on the war. Hence the necessity of placing this power in the same hands.

§ 397. It is the general policy of nations, in time of peace, to prepare for war. A constant preparation for defence is deemed the surest means of preventing the attacks of an enemy. One of the means provided for the national defence and safety, is a standing army. A *standing army* is a large number of armed soldiers, kept constantly in pay, and ready for action. Standing armies are by many regarded with jealousy, as being dangerous to liberty. But the distance of this country from the powerful nations of the world, renders an extensive peace establishment unnecessary. The standing army of the United States consists of several (formerly six) thousand men, distributed among the several forts and arsenals.

§ 398. But the constitution has very prudently added a precaution against danger from standing armies. An army can be sustained only so long as money is appropriated for its support; and appropriations for this purpose can be made for the term of two years only; at the expiration of which, the people, through their representatives, may destroy the army, by withholding the means of its subsistence.

§ 399. Congress shall have power, "To maintain a navy."  
—*Art. 1, sec. 8, cl. 13.*

§ 400. A *navy* means the ships of war that belong to a nation. A navy is generally supposed to be a safer and more effective means of national defence. An efficient navy is the principal source of security against dangers from abroad. There could be no safety to the inhabitants on a maritime frontier without naval protection; and a navy is especially necessary to protect our commerce and navigation.

§ 401. Congress shall have power, "To make rules for the government and regulation of the land and naval forces."—*Art. 1, sec. 8, cl. 14.*

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power given to congress? § 397. What is a *standing army*? § 398. How does the constitution guard against the danger of standing armies? § 400. What is a *navy*? What is its object? § 403. For

§ 402. This power, being connected with or implied in the foregoing, is consequently exercised by congress. In pursuance of this power, and of the other powers of a similar nature, the departments of war and the navy have been established by congress.

§ 403. Congress shall have power, "To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions."—*Art. 1, sec. 8, cl. 15.*

§ 404. To keep up a standing army, distributed throughout the union in portions of sufficient strength to be adequate to these purposes, would be both unsafe and very expensive. The provision made for these objects in this clause of the constitution, while it is safe and economical, is equally effective. In pursuance of this power, congress has by law authorized the president to call out the militia, whenever he shall judge it to be necessary, to repel invasions, or to suppress insurrections, within the United States. This power is properly committed to the executive, as it is to be exercised upon sudden emergencies, and when the action of congress may not be had on the subject.

§ 405. Congress shall have power, "To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States ; reserving to the states, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress."—*Art. 1, sec. 8, cl. 16.*

§ 406. Uniformity in the organization, arming, and discipline of the militia, was deemed important ; and this could be effected only by intrusting their regulation to congress. But to have placed the military force under the entire control of the national officers, would have rendered the states dependent on the general government for their own defence.

§ 407. The law prescribes the manner in which the militia is to be organized, armed, disciplined, and governed ; and

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what purposes may the militia be called forth ? § 404. Why is this preferable to a standing army ? § 405. What power do congress and the states respectively exercise in organizing and disciplining the militia ? § 406. Why is this power thus divided ? § 407. When is the

it provides for drafting, detaching, and calling forth the quotas, or shares to be furnished by the respective states, when required by the president. The militia, when called out, are subject to the rules of war; and the law imposes a fine upon every delinquent, to be adjudged by a court martial composed of militia officers only, and held in the manner prescribed by the articles of war. The militia are not considered to be in the service of the United States until they are mustered at the place of rendezvous; after which the state government has no authority over them.

§ 408. Every free, able-bodied white male citizen, of the age of eighteen, and under forty-five years, is liable to do military duty, except such as are by law exempted from the same. Persons exempted by the law of the United States, are, the vice president and all executive and judicial officers of the government of the United States; members and officers of both houses of congress; all custom house officers with their clerks; all post officers and drivers of mail stages; ferrymen employed at ferries on post roads; all pilots and mariners; together with all persons exempted by the laws of the respective states.

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## CHAPTER XVII.

### *Local Jurisdiction—District of Columbia, and other National Property.*

§ 409. Congress shall have power, "To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States; and to exercise like authority over all places purchased by the

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militia considered in the service of the United States? § 408. What persons are subject to military duty? Who are exempt?

§ 409. Where has congress exclusive legislation? § 410. Why is

"consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings."—*Art. 1, sec. 8, cl. 17.*

§ 410. Complete and exclusive power at the seat of government, is necessary to protect the public authority from insult, and to prevent interruptions to its proceedings. The members of the general government ought not to be dependent on a state for protection in the discharge of their duties. Congress had, on one occasion, been treated with indignity and abuse; and the executive authority of the state in which that body was sitting having failed to afford protection, congress removed to another state. This occurrence may have suggested the incorporation of this provision into the constitution.

§ 411. The establishment of a permanent seat of government for the United States, after the treaty of peace with Great Britain, received the early attention of congress. In October, 1783, it was resolved, that buildings for the use of congress should be erected on the banks of the Delaware. A few days later it was resolved, that buildings for a similar purpose should likewise be erected on the Potomac, with the view of reconciling the conflicting wishes of the northern and southern states, by establishing two seats of government. In December, 1784, it was farther resolved, that a district should be purchased on the banks of the Delaware for a federal town; and that contracts should be made for erecting a house for the use of congress and the executive officers, and suitable buildings for the residence of the president and the secretaries of the several departments.

§ 412. But the appropriation of the necessary fund for these purposes, requiring the assent of nine states, was prevented by the southern interest. In 1790, a compromise was made, by which the friends of Philadelphia, in consideration of having the seat of government at that city during ten years, the time estimated to be necessary to erect the public buildings, agreed that the seat of government should be permanently fixed on the Potomac.

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exclusive power necessary at the seat of government? § 411, 412.  
State the circumstances attending the establishment of the present seat



§ 413. The territory in which the seat of government is located, is ten miles square. It was ceded to the general government by the states of Maryland and Virginia, and erected into a district, under the exclusive jurisdiction of congress, by the name of the *District of Columbia*. In the city of Washington, which is built near the centre of the district, the necessary buildings are erected for the accommodation of the general government, where its seat was established at the commencement of the present century. It was in view of the acquisition of this territory, that provision was made by the constitution for its government.

§ 414. As the inhabitants of this district have placed themselves under the government of congress, they have no voice in the election of representatives, nor of electors of president and vice president. Although laws are from time to time passed by congress for the government of this district, these acts principally adopt the laws of Maryland and Virginia as the law of the several portions of the district ceded by those states respectively.

§ 415. It is equally necessary that congress should exercise like authority over the forts, arsenals, dock-yards, and other property of the United States. These depositories of the national armor should be exempt from the authority of the state in which they are situate. It is properly provided, that no state may be divested of any portion of its territory, without the consent of its legislature.

§ 416. The power of congress to legislate exclusively within any place ceded by a state, carries with it the right to make that power effectual. Congress may provide by law for the apprehension of a person who escapes from such place, after committing a felony, or for conveying him to or from any other place for trial or execution. Congress may punish those for misprision of felony, who, out of a fort, conceal a felony committed within it.

§ 417. To give the United States exclusive legislation and jurisdiction over any place in a particular state, it must be

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of government. § 413. Describe its location, name, &c. § 414. How is the district governed? § 415. Can the general government acquire territory from a state without the state's consent? § 417. How is it obtained?

freely ceded for one of the purposes specified in the foregoing clause of the constitution. When a place has been purchased by the United States for the erection of a fort, with the consent of a state, the jurisdiction of the state ceases therein, and the inhabitants of such place cannot exercise within it any civil or political privileges under the laws of the state, as they are not subject to such laws, nor bound to pay taxes imposed by their authority.

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## CHAPTER XVIII.

### *General Power to make all Necessary Laws.*

§ 418. Congress shall have power, "To make all laws " which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested " by this constitution in the government of the United States, " or in any department or officer thereof."—*Art. 1, sec. 8, cl. 18.*

§ 419. Without such a power, many of the powers expressly delegated could never be carried into effect. It is impossible, in an instrument of this kind, to descend to all the minute details of legislation. As it could not be foreseen what subjects would require the action of congress in all future time, an express enumeration of all necessary powers would have been attempted in vain. Under the confederation, congress could exercise no powers but such as were "*expressly* delegated." This was one of the principal defects of that instrument, which led to its abolition. It was deemed expedient, therefore, to adopt a clause which would furnish a rule of interpreting the constitution in such manner as to avoid the embarrassments which congress had experienced.

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§ 418. What general power of making laws is granted to congress ?  
 § 419. Why is such a power necessary ? Did it exist under the confederation ?  
 § 420. Was an express grant necessary to authorize the

§ 420. Although this explicit declaration was needful in order to remove the scruples of those who might think the powers of the national government extended only to those which were expressly granted, it is alleged that "the power to make all necessary and proper laws" to carry the general powers into effect, might be constitutionally exercised without an express declaration of this power. Before the constitution was adopted by the states, this clause was vehemently declaimed against, as granting powers almost unlimited. In vindicating this clause it was maintained, that the *declaration* of this power was not necessary to its creation, for its existence was *implied*. Said Mr. Madison on this point, "No axiom is more clearly established in law or in reason, than that wherever the end is required, the means are authorized; wherever a general power to do a thing is given, every particular power necessary for doing it is included."

§ 421. In pursuance of this general power to make all necessary laws, congress has exercised the power to inflict punishment in cases not specified in the constitution; to exact an oath of office, in addition to the oath of fidelity to the constitution; to punish larceny of letters from the post office, or the robbery of the mail; to construct break-waters and light-houses, and remove obstructions in navigable rivers, under the power "to regulate commerce:" Also to secure to the United States priority of payment from the effects of insolvent debtors. Congress has enacted, that in all cases in which the estate of any deceased debtor shall not be sufficient to pay all his debts, or in which any revenue officer or other person, becoming indebted by bond or otherwise, shall become insolvent, the debt due to the United States shall be first satisfied. The powers exercised in the cases above enumerated, and in innumerable others, are implied in the powers expressly granted; and they might have been exercised without the general grant to pass all necessary and proper laws to carry the expressed powers into effect.

§ 422. Under the power to make all laws necessary to carry into execution the powers of the government, con-

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exercise of this power? § 421, 422. What laws have been enacted

gress has exercised the power to create corporations. This power was exercised by the first congress under the constitution, by the passing of the act incorporating a national bank, in 1791 ; and subsequently, in 1816, by the incorporation of a new bank, after the charter of the first was expired.

§ 423. The constitutionality of this power has, however, been questioned ; and its exercise in this instance has met with much opposition in congress. Although the opinion of the supreme court has been repeatedly expressed in accordance to that of a majority of congress, the question is not settled. It has undergone much discussion and investigation, both in congress and among the people at large ; but a wide difference of opinion on the subject still prevails. Bills for renewal and incorporation have received the executive veto under different administrations. And the advocates of this power admit, that, in order to justify its exercise in the creation of a bank, such a corporation must be deemed essential in carrying into effect some power vested in the general government.

§ 424. Under the power to establish post offices and post roads, and the power to raise money for providing for the general welfare, together with the power to pass all laws necessary and proper for carrying into execution the powers of government expressly authorized, congress has, at different times, appropriated funds for *internal improvements*, by means of roads and canals. But this power also has been disputed ; and several presidents have denied the power of congress to pass bills for objects of this kind, and have withheld their sanction from such bills.

§ 425. But the power to lay out, construct, and improve military and post roads, and to cut canals through the states, with their consent, for promoting internal commerce, and for the more safe and economical transportation of troops and military stores in time of war, is pretty generally conceded to congress. And the right to appropriate money for

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in pursuance of implied powers ? 423. Was the constitutionality of the bank universally admitted ? § 424, 425. Under what powers have internal improvements been made ? When is the making of them constitutional ?

improvements which are not of a local or state character, but are of such general importance as to give them a *national* character, is admitted by those even who profess to be in favor of a strict construction of the constitution.

§ 426. There are several other powers granted to congress in other sections of the constitution, which might require examination here ; but to preserve the regular connexion of its several provisions, the clauses conferring these powers will be considered in the order in which they severally occur.

## CHAPTER XIX.

### *Restrictions on the Powers of Congress.*

§ 427. "THE migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress, prior to the year one thousand eight hundred and eight ; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person."—*Art. 1, sec. 9, cl. 1.*

§ 428. This clause has reference to the slave trade, which was carried on extensively by citizens of the United States when the constitution was framed. The southern states were in favor of a clause allowing to each state the right to continue the importation of slaves during its pleasure. It would probably have been impossible to procure the ratification of the constitution by the number of states required for its establishment, without conceding to the states the right of continuing the traffic in slaves for a period of time. In allowing the traffic, however, for a specified period, its abolition at the expiration of that period seems to have been contemplated. Laws have accordingly been passed, from time to time, for the suppression of the foreign slave trade. (§ 382, 383.)

§ 427. What is provided concerning the persons? § 428. What was the object of this?

§ 429. It is indeed to be regretted, that the great charter of American liberty has ever sanctioned this traffic in human beings ; and it is remarkable that a provision of this character should have been adopted by those who had declared it to be a self-evident truth, “ that all men are created *free and equal*, and endowed by their Creator with the *unalienable* rights of life, liberty, and the pursuit of happiness.” But it affords cause for gratulation, that measures were so promptly taken to abolish the foreign slave trade at the earliest period permitted by the constitution.

§ 430. “ The privilege of the writ of *habeas corpus* shall “ not be suspended, unless when, in cases of rebellion or “ invasion, the public safety may require it.”—*Art. 1, sec. 9, cl. 2.*

§ 431. *Habeas corpus*, (Latin,) signifies have the body. If a person has been illegally deprived of his liberty, he may petition a court or judge, who issues a writ, commanding the party imprisoning or detaining him, to produce his body and the cause of his detention, before the judge or court. If, upon inquiry, the imprisonment shall be found to have been illegal, relief is granted. The privilege of this writ was deemed too important not to be secured by the constitution of a free people.

§ 432. “ No bill of attainder or ex post facto law shall be “ passed.”—*Art. 1, sec. 9, cl. 3.*

§ 433. *Bills of attainder* are acts of a legislature, by which capital punishments are inflicted upon persons pronounced guilty, without trial or conviction in the ordinary course of judicial proceedings. An *ex post facto law* is a law that declares an act to be criminal which was not so before the act was passed ; or that renders an act punishable in a more severe manner than when it was committed. In a more comprehensive sense, all laws having effect upon past transactions, are ex post facto laws.

§ 434. “ No capitation, or other direct tax shall be laid, “ unless in proportion to the census or enumeration herein “ before directed to be taken.”—*Art. 1, sec. 9, cl. 4.*

only may the privilege of the writ of *habeas corpus* be suspended ?

§ 431. What is *habeas corpus* ? What is the effect of this writ ?

§ 433. What is a *bill of attainder* ? An *ex post facto law* ? § 434.

§ 435. This clause was intended to prevent the laying of taxes otherwise than according to the rule prescribed in the third clause of the second section of the first article of the constitution, and may be considered merely a repetition of that part of the said clause, which makes three fifths only of the slave population subject to direct taxation. Congress apportions taxes among the states in proportion to the number of their representative population; but states apportion them among their citizens according to their property. The definition of capitation or poll tax has been given. (§ 131.)

§ 436. "No tax or duty shall be laid on articles exported from any state. No preference shall be given, by any regulation of commerce or revenue, to the ports of one state over those of another; nor shall vessels bound to or from one state, be obliged to enter, clear, or pay duties in another."—*Art. 1, sec. 9, cl. 5.*

§ 437. This clause was necessary to ensure a uniform rate of duties or taxes throughout the states, and to secure freedom and equality in trade. To levy higher duties in the ports of one state than in those of another, would be unjust, and cause dissatisfaction among the members of the union.

§ 438. "No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money, shall be published from time to time."—*Art. 1, sec. 9, cl. 6.*

§ 439. This clause places the public money beyond the reach or control of the executive, or any other officer, and secures it in the hands of the representatives of the people. And as a law is necessary to its being drawn from the treasury, it can seldom be appropriated to unworthy objects. The law requires the secretary of the treasury to make annually a general statement of the receipts and expenditures of the public money. This account is published by

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How must all direct taxes be laid? § 435. What census or enumeration is here meant? § 436. What restrictions exist upon the power over the trade of the states? § 437. What is the object of this restriction? § 438. Under what regulation is money drawn from the treasury? § 439. What is the intention of this clause? § 441. What is the object of the restriction relating to titles, offices, &c.

order of congress; and thus the people are informed in what manner, and for what purposes, their money is expended; and a due responsibility is ensured on the part of their agents.

§ 440. "No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state."—*Art. 1, sec. 9, cl. 7.*

§ 441. This clause was evidently intended to prevent the introduction of customs that might in time diminish that respect for republican simplicity which ought to distinguish American citizens, and to guard against the corruption of the officers of the national government by foreign influence.

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## CHAPTER XX.

### *Restrictions on the Powers of the States.*

§ 442. "No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility."—*Art. 1, sec. 10, cl. 1.*

§ 443. The prohibition on the states against treaties, alliances, and confederations is the same as that which existed in the confederation; and the propriety of transferring it to the new constitution is apparent.

§ 444. The reasons why the power to grant letters of marque and reprisal is given exclusively to congress, are sufficient to show the impropriety and danger of intrusting it to the states. (§ 392.)

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§ 442. What is prohibited to the states in the first clause?



§ 445. The necessity of giving to congress the power to coin money has been shown. (§ 336.) To prevent the inconveniences and embarrassments in trade which would be produced by a currency so variable as might be expected if each state were permitted to coin money and regulate its value, this power was prohibited to the states.

§ 446. *Bills of credit* are declared to mean promissory notes, or bills issued exclusively on the credit of the state, intended to circulate as money, and which the faith of the state only is pledged to pay. The effects of this kind of paper money on the public prosperity, by destroying the necessary confidence between man and man, as well as confidence in the public faith, were disastrous. These bills of credit, having no funds set apart to redeem them, were seldom paid, except at a ruinous discount. The losses sustained by the community from this species of money, prior to the adoption of the constitution, induced this restriction upon the powers of the states. This prohibition does not apply to the notes of a state bank, drawn on the credit of a particular fund appropriated for that purpose.

§ 447. The power to make any thing but gold and silver a tender in payment of debts, is taken from the states on the same principle as the power of issuing bills of credit. Paper money, as well as all kinds of property, is continually liable to fluctuation in value, and might subject those who should be compelled to receive it, to great inconvenience and loss.

§ 448. Bills of attainder, and *ex post facto* laws, have already been defined. (§ 433.) Being unjust in principle, and rendering both life and property insecure, the power to pass them is with the same degree of propriety prohibited to the states as to congress.

§ 449. Laws impairing the obligation of contracts are contrary to the first principles of civil society. The private rights of every member of the community could not be se-

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§ 446. What are *bills of credit*? Why was their emission by the states prohibited? § 447. Why are gold and silver only made a legal tender? § 448. Why may not states pass bills of attainder and *ex post facto* laws? § 449. What is the nature of a law impairing the obligation of contracts? What is the power of a state in relation to corporations?

cure under any government possessing this power. A state legislature may alter or modify public corporations, such as counties, towns, and cities, provided the property therein be secured to its original owners; but such legislature cannot repeal statutes creating private corporations, or dispose of the property of the corporators. A charter from the British crown to the trustees of Dartmouth college before the revolution, has been declared to be a contract within the meaning of the constitution. The supreme court held that the college was a private corporation; and that the act of the legislature of New Hampshire, materially altering the charter without the consent of the corporation, was a law impairing the obligation of a contract, and therefore unconstitutional and void.

§ 450. "No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the nett produce of all duties and imposts laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage; keep troops or ships of war in time of peace; enter into any agreement or compact with another state, or with a foreign power; or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay."—*Art. 1, sec. 10, cl. 2.*

§ 451. The reasons for restraining the power of the states over imports and exports, have been considered. (§ 291.) Inspection laws are enacted by the states; and are intended to improve the quality of the products of a country. Inspectors place upon the articles inspected a mark or stamp, indicating their quantity or measure, and their quality. This serves also to protect purchasers against loss. A small tax is laid upon the goods thus inspected, to pay for their inspection. The objects of the remaining provisions of this clause are so apparent as not to require particular notice.

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§ 450. How far only may states lay imposts and duties? When engage in war? § 451. Why ought not the states to lay duties?

## CHAPTER XXI.

*Executive Department.—Term of Office and Election of President and Vice President.*

§ 452. "The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same time, be elected as follows."—*Art. 2, sec. 1, cl. 1.*

§ 453. The necessity of an executive department, the general principles on which it is established, and the nature and duties of the executive office, have been considered. It has also been stated, that this department did not exist under the confederation. (§ 83, 84, 179.) Experience had convinced the framers of the constitution, not only that an executive power was necessary, but that, to secure an energetic and prompt execution of the laws, this power ought to be vested in a single person. All laws duly made must be carried into effect. Whether they be deemed by an executive to be inexpedient or otherwise, it is his duty to see them faithfully administered, until repealed by the legislature, or pronounced unconstitutional by the judiciary.

§ 454. Respecting the proper duration of the executive office, a diversity of opinion prevailed in the convention. Some proposed a short term, in order to make a president feel his responsibility to the people. Others deemed a long term necessary to a firm and independent exercise of his constitutional powers, and a steady, unchanging system of administration. If elected for a short term, he might act with a view to popularity and a re-election, rather than the general good. If elected for a very long period, or during good behavior, as some proposed, the measures of his administration, though ever so unwise or pernicious, could not be effectually arrested, till they had worked great injury. The medium of four years was adopted, as being

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§ 452. In what officer is the executive power vested? § 452 Why is this power vested in a single person? § 454. What different opinions prevailed in the convention respecting the duration of the office?

calculated to prevent the evils and secure the benefits, as far as possible, of both a short and a long term.

§ 455. The presidential term of office commences on the fourth day of March next after the election. It was on this day of the year 1789, that the government under the constitution went into effect; and it is, consequently, the day on which every new house of representatives and one third of the senate commence their official term.

§ 456. "Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector."—*Art. 2, sec. 1, cl. 2.*

§ 457. The objects to be secured by the election of a president by a small number of electors, were various. It was thought that a small number of men, selected by their fellow-citizens, would be more competent to make a choice of a person possessing the necessary qualifications for so important an office. It was supposed also that less tumult and disorder would attend the election of chief magistrate in the manner provided, than by an election by the people at large. Though the mode of choosing the president through an intermediate body of electors may be liable to as few objections as any other mode, yet it is at least questionable whether either of the above mentioned advantages have, in practice, been realized. The candidates for presidential electors being selected for their known preference of the very individual for whom the people themselves would vote if the election were made by them immediately, it is probable that the election of electors is attended with as much heat and tumult, as the election of the president by the direct vote of the people would be.

§ 458. The manner of appointing electors in the different states is not uniform. In some of the states, the electors are appointed by the legislature. In others, they are chosen by

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§ 455. When does the term commence? § 456. How are electors of president chosen? § 457. For what reasons was the mode of election by a small number of electors adopted? § 458. How are electors ap.

the people in districts. By this mode, a number of electors, equal to the number of members of the house of representatives to which a state is entitled in congress, are chosen by the people in the several congressional districts, as their representatives are elected. These electors, so chosen, then meet and appoint the two remaining electors, corresponding to the two senators to which the state is entitled in congress. Another, and the most common mode, is by general ticket. The names of all the electors to be chosen, are placed on a single ballot; and all the electors are voted for throughout the state.

§ 459. "The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list, the said house shall in like manner choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote: a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors, shall be the vice president. But if there should remain two or more who have equal votes, the senate shall choose from them, by ballot, the vice president."—*Art. 2, sec. 1, cl. 3.*

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pointed in the several states? § 459. Describe the manner in which

§ 460. The mode of election prescribed by the above clause, being deemed objectionable, an amendment to it was proposed at the first session of the eighth congress and subsequently adopted and ratified by the states. The amendment is as follows :

§ 461. "The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom, at least, shall not be an inhabitant of the same state with themselves ; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president : and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted : the person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed ; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote ; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice president shall act as president, as in the case of the death or other constitutional disability of the president. "The person having the greatest number of votes as vice president, shall be the vice president, if such number be a majority of the whole number of electors appointed ; and

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the president and vice president were at first elected ? § 460. When was a new mode of election proposed and adopted ? § 461. Describe

“ if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice president : “ a quorum for the purpose shall consist of two thirds of the “ whole number of senators, and a majority of the whole “ number shall be necessary to a choice.

“ But no person constitutionally ineligible to the office of “ president, shall be eligible to that of vice president of the “ United States.”—*12th Amendment of the Constitution.*

§ 462. “ The congress may determine the time of choosing the electors, and the day on which they shall give their “ votes ; which day shall be the same throughout the United “ States.”—*Art. 2, sec. 1, cl. 4.*

§ 463. Every necessary precaution appears to have been used by the framers of the constitution against fraud and corruption in the election of president, and to secure a free and unbiased vote of the electors. An important provision is that which requires a majority of all the electoral votes to effect a choice. If the election were by plurality, the most obnoxious candidate might be elected. And to secure his election, there would be a strong temptation to effect, by sinister influence, a division of the opposition among a multiplicity of candidates.

§ 464. The provision requiring the electoral votes to be given on the same day in all the states, was intended to prevent the opportunity for bargain and intrigue between the electoral colleges of the different states. All being required to cast their votes on the same day, and before any one of them can learn the result of the vote in other states, secures an unbiased choice on the part of all. Congress has enacted, that the electors shall be chosen within thirty-four days preceding the day on which they shall give their votes ; and that the day on which their votes shall be given, shall be the first Wednesday in December in every fourth year after the last election. The place of meeting is usually at the seat of the government of each state.

§ 465. By an act of congress, the electors in each state

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the present mode of election. § 463. Why is a majority of the votes of electors necessary to a choice ? § 464. Why are votes required to be cast on the same day in all the states ? When are electors to be chosen ? and when do they vote for president ? § 465. What regulations have been adopted for preserving and counting the votes ?

are required to make and sign three certificates of all the votes given by them, and to seal up the same. One of these certificates is to be sent by a person duly appointed by them for that purpose, to the president of the senate, at the seat of government, before the first day of January next ensuing. Another of these certificates is to be forwarded, by the post office, also directed to the president of the senate ; and the third is to be delivered to the judge of the district in which the electors shall be assembled. The day appointed for opening the certificates and counting the votes, is the second Wednesday in February succeeding the election.

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## CHAPTER XXII.

### *Qualifications and Compensation of President and Vice President.*

§ 466. "No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president ; neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States."—*Art. 2, sec. 1, cl. 5.*

§ 467. The same reasons which have been given for the qualifications of other officers of the government, apply with greater force in the case of the election of a chief magistrate. To exclude foreign influence from the government, and to secure the election of men to this high and responsible office whose age and experience have given them abundant opportunity of acquiring a thorough knowledge of public affairs, are the objects of this clause.

§ 468. "In case of the removal of the president from office, or of his death, resignation, or inability to discharge

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§ 466. What qualifications are required for the office of president ?  
§ 467. What are the objects of these provisions ? § 468, 469, 470. What



“ the powers and duties of the said office, the same shall devolve on the vice president ; and the congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice president, declaring what officer shall then act as president ; and such officer shall act accordingly, until the disability be removed, or a president shall be elected.”—*Art. 2, sec. 1, cl. 6.*

§ 469. Congress has, in pursuance of the power here given, provided by law, that in case these supposed vacancies shall happen, the president of the senate pro tempore shall act as president ; and in case there shall be no such president pro tempore, the speaker of the house shall so act, until the vacancy shall be supplied. And as it may become a question on whom the office would devolve after the expiration of the congress for which the speaker was chosen, it is customary for the vice president to withdraw from the senate previously to the adjournment of the session, to afford an opportunity to the senate to choose a president pro tempore, who would, in that case, act as president.

§ 470. If the vice president succeeds to the office of president, he continues in it till the expiration of the term for which the president was elected, unless the temporary disability of the president be sooner removed. If both offices should be vacant, the law makes it the duty of the secretary of state to cause notice to be given to the executive of every state, and published, ordering an election for the appointment of presidential electors, to elect a president.

§ 471. “ The president shall, at stated times, receive for his services, a compensation which shall neither be increased nor diminished during the period for which he shall have been elected ; and he shall not receive within that period any other emolument from the United States, or any of them.”—*Art. 2, sec. 1, cl. 7.*

§ 472. The object of this clause is to secure the independence of the executive. The separation of the different powers of the government would exist merely in name, if the compensation of the executive and judicial officers could be increased or diminished at the pleasure of the legislature.

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provisions have been made for filling vacancies in the office ? § 471  
How does the constitution provide for compensation ? § 472 What is

With this power of operating upon the necessities, or of tempting the avarice of an executive, he might be induced to give up his own judgment to the will of those who have the control of his purse. He ought therefore to be independent for support on the legislative department; and being assured of an adequate and permanent salary, he is very properly prohibited from receiving any other emolument, which might influence him to swerve from an upright and impartial discharge of his official duties. The salary of the president, as fixed by law, is \$25,000 a year, with the use of buildings, furniture, &c.; and that of the vice president is \$5,000.

§ 473. "Before he enters on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect, and defend the constitution of the United States."—*Art. 2, sec. 1, cl. 8.*

§ 474. It is the practice, under all the constitutions, both of the United States, and of all the states, for legislators, judges, jurors, and other civil as well as military officers, to bind themselves under the solemnity of an oath, to discharge their trusts and duties faithfully. This oath implies a belief in the existence of a Supreme Being, who will reward the good and punish the guilty, and is an appeal to him to bear witness to the rectitude of the intentions with which such oath is made. Notwithstanding this precaution to ensure fidelity on the part of public officers, it is to be feared that in many instances a sense of the obligation imposed by an oath of office, is made to yield to the obligations and pledges of public men to support the interests of party.

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the object of this provision? § 473. What oath or affirmation does he make? § 474. What does this oath imply?

## CHAPTER XXIII.

*Powers and Duties of the President.*

§ 475. "THE president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the active service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment."—*Art. 2, sec. 2, cl. 1.*

§ 476. The direction of the public forces to execute the laws, or repel foreign invasion, can be most effectually exercised by a single person; and as this power is of an executive character, it is intrusted to the chief magistrate of the nation. This power existed in the executives of the states at the time of the formation of the constitution; and the propriety of its being committed to the executive authority seems not to have been seriously questioned. The power of the president to call forth the militia on sudden and special occasions has been noticed. (§ 404.)

§ 477. The power of the president to require the opinions of his cabinet counsellors is properly granted; but this right, it is supposed, would exist in the absence of any constitutional provision. As the several executive auxiliary departments are established to aid in the administration of the laws, and as the duties and responsibility of the president make it necessary that he should be kept acquainted with the business of every branch of the executive department, it is right that the principal officer of each should give to the president such information and assistance as may at any time be required.

§ 478. Upon the propriety of confiding to the executive

§ 476. Why are the public forces made subject to the command of the president? § 477. Why are the opinions of the heads of departments necessary? § 478. Why should not the power of pardon ex-

the power to grant reprieves and pardons, we have already remarked. (§ 90.) As judgment in cases of impeachment extends only to removal from office, and disqualification to hold office, there cannot exist the same reasons for the exercise of the pardoning power in these cases, as in those which affect the lives and liberties of persons. This restriction upon the power of pardon is intended to prevent the executive from screening public officers with whom he might have formed a corrupt coalition, or who might be his particular dependants or favorites.

§ 479. "He shall have power, by and with the advice and consent of the senate, to make treaties, provided two thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the congress may by law vest the appointment of such inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of departments."—*Art. 2, sec. 2, cl. 2.*

§ 480. In monarchical governments, the power of ratifying and rejecting treaties is exercised by the king. In the United States, this power is confided to the president and senate. As treaties are, by the constitution, declared to be the supreme *law* of the land, some suppose the power to make them more properly belongs to the legislature. But as secrecy and despatch in negotiations may become necessary to secure a favorable result, the power is committed to the executive. However, to confide a power so momentous as that of making treaties of peace and war, and of commercial intercourse with the rest of the world, to a single individual, was not considered safe. The senate is therefore associated with the president in making treaties. Its members are easily convened, and are generally governed by steady, systematic views, and a due regard for national character, and act with promptitude and firmness.

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tend to impeachments? § 479. What powers are here enumerated?  
 § 480. Why is the power of making treaties in part given to the presi-

§ 481. A *treaty* has been defined to be a bargain between nations. (§ 27.) Treaties must of necessity be made through the agency of men appointed for that purpose. Agents who are intrusted with this business are called ambassadors and public ministers. The nomination of these officers is committed to the executive, because, it is presumed, his undivided responsibility will induce a proper regard to his reputation in making selections. And he is supposed also to be better fitted to make a choice of persons for these offices, by his superior capacity to judge of the requisite qualifications.

§ 482. It is by treaty that contending nations settle their disputes, agree upon terms of peace, and regulate their commercial intercourse. The particulars of the contract are agreed on by the ministers of each government, who put their agreement in writing; two copies of which are made, signed and sealed; and one of them is sent to each of the respective governments, to be ratified. Both parties must ratify, or the treaty fails. The concurrence of two thirds of the senators present, with the president, in order to the ratification of treaties, furnishes a reasonable security against the acceptance of unfavorable propositions from foreign powers.

§ 483. An *ambassador* is a person sent by the government of a nation to reside at the seat of government of another nation, to maintain a good understanding, and to look to the interests of his own nation. This is called an *ambassador in ordinary*. An *ambassador extraordinary* is a person sent on some particular occasion, who retires as soon as the affair on which he was sent is despatched. He is sometimes called an *envoy*; and when he has full power to act as he may deem expedient, he is called *envoy plenipotentiary*, the latter word signifying full power.

§ 484. The agent sent by the United States to reside at a foreign court is usually called *minister*. He represents the government that sends him, and his duties depend on the instructions which he receives. Ministers of the United

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dent? Why is the senate associated? § 481. Why has he the power of nominating public ministers? § 482. How are treaties formed? § 483. What is an *ambassador*? An *envoy*? § 484. What are the duties of ministers and charges of affairs of the United States? Their

States are allowed \$9,000 a year for their personal services and expenses. A *charges des affaires*, (French,) meaning charge of affairs, is an agent of inferior grade, sent abroad to manage the affairs of his nation. He is allowed \$4,500 for his services and expenses. But the president may allow to a minister or charge of affairs, on going out of the United States, in addition to his salary, an *outfit*, equal in amount to one year's full salary.

§ 485. *Consuls* are commercial agents residing in foreign seaports. Their duties are various. They receive the protests or declarations which captains, passengers, and merchants, citizens of the United States, may make there. They dispose of the personal estate left by citizens of the United States, who die within their consulates, leaving no representative or partner in trade to take care of their effects. They receive the registers, sea letters, or passports of masters of United States' vessels arriving at the port where they reside. They render any assistance which merchants or ship masters of their own country may need; and they grant all certificates required by commercial regulations, or by treaty. Consuls are either paid a salary, or they receive fees fixed by law for each of the several acts they are required to perform.

§ 486. The appointment of subordinate officers of the government belongs with propriety to the president, who is, in a great measure, responsible for the faithful discharge of their duties. There are many officers, however, employed in the several departments of the government, whose trusts are unimportant, and whose appointment is vested in those by whom they are more immediately employed. The reasons for investing the executive and senate with the general power of appointment have been elsewhere stated. (§ 91, 92.)

§ 487. "The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session."—*Art. 2, sec. 2, cl. 3.*

salaries? § 485. What are *consuls*? Their duties? § 486. Why is it proper that a president should appoint his own subordinate officers? § 487. When the senate is not in session, how is a vacancy filled? For how long a time? § 488. Why must their commissions then

§ 488. This power is essential to prevent any detriment to the public interests which might otherwise result from vacancies in office that happen when the senate is not in session. But the persons appointed to fill such vacancies must be nominated to the senate, and their appointment confirmed by that body, during its next session. Without this restriction upon the president's power to fill vacancies, he might continue unworthy favorites in office at his pleasure.

§ 489. Vacancies that *happen* are those which occur from death, resignation, promotion, or removal; and the power has been questioned of appointing ambassadors to foreign nations, during the recess of the senate, where no such appointments had before been made; as, in that case, no vacancy would have happened. And if the senate be in session when a new office is created by law, and a nomination be not then made by the president, it is presumed he cannot appoint to such office during the recess, as the vacancy does not in this case *happen*.

§ 490. The power of the president to *remove* an executive officer, as it is not expressly authorized by the constitution, has also been disputed. It was the opinion of the writers of the Federalist, who had assisted in framing the constitution, that "the consent of the senate would be necessary to displace as well as to appoint." But this construction has since been rejected, and it appears to be settled by practice, that the power of displacing belongs to the president.

§ 491. It may be proper here to observe, that, according to this practical construction, the constitution fails to provide any effectual guard against the abuse of the power of appointment. For a president may remove any officer he pleases, and fill the vacancy during the recess of the senate; and, should the senate, at its next session, refuse to sanction the appointment, he may re-appoint the same person, or appoint another favorite, during the next recess, and so on during pleasure.

§ 492. "He shall from time to time give to the congress

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expire? § 489. What are vacancies that happen? § 490. Has the president power to remove officers? § 491. If so, may not the object of the constitution be defeated? How? § 492. What duties are

“ information of the state of the union, and recommend to  
“ their consideration such measures as he shall judge neces-  
“ sary and expedient ; he may, on extraordinary occasions,  
“ convene both houses, or either of them ; and in case of  
“ disagreement between them with respect to the time of ad-  
“ journment, he may adjourn them to such time as he shall  
“ think proper ; he shall receive ambassadors and other  
“ public ministers ; he shall take care that the laws be faith-  
“ fully executed, and shall commission all the officers of the  
“ United States.”—*Art. 2, sec. 3.*

§ 493. The president delivers to congress annually, at the opening of every session, a *message*, giving information relative to the internal affairs of the union, and its relations with foreign powers ; and he brings to its notice such subjects as seem to demand legislative action. *Special* messages also are communicated, from time to time, as subjects arise, or in obedience to calls of congress for information. The propriety of committing these duties to the president is self-evident. The imperative duty of seeing that the laws are faithfully executed, without question or hesitation on his part, whatever may be their character, is here declared.

§ 494. From a review of the powers and duties of the president, it appears that they are, many of them at least, exceedingly important ; and their proper or improper exercise must have a sensible effect, for good or for evil, upon the public welfare. In view of the magnitude of the executive trust, the constitution seems to have made due provision to prevent its abuse : first, in the mode of the president's appointment ; which is calculated to prevent the election of incompetent or undeserving men, as well as the successful employment of undue means to procure an election ; secondly, by the limitation of the term of office to four years, at the expiration of which he may be displaced ; thirdly, by the precise and definite limitation of his powers ; and lastly, by providing for his removal from office, by impeachment, for misconduct.

§ 495. But to all these safeguards and restrictions should

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enumerated in this section ? § 493. How, and on what occasions does the president communicate to congress ? § 494. In what particulars does the constitution guard the executive trust ? § 495. What farther



be superadded unremitting vigilance on the part of the people. No barriers which the constitution interposes, nor all the restraints of law, are sufficient to protect the liberties of the people, if the public eye cease to inspect the conduct of those who are intrusted with the powers of government; and if the sovereign people be not disposed to call those to account who abuse the trusts confided to them.

§ 496. "The president, vice president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."—*Art. 2, sec. 4.*

## CHAPTER XXIV.

*Executive Auxiliaries.—Department of State—of the Treasury—of War—of the Navy—Attorney General.*

§ 497. To aid the president in the administration of the government and laws of the United States, the following departments have been established: The department of state, the department of the treasury, the department of war, the department of the navy, and the post office department. The head officers of these departments, together with the attorney general, form the principal home ministers of the executive, and constitute what is called the *cabinet*. Until recently the postmaster general was not considered a cabinet officer.

§ 498. The *department of state* existed for many years before the adoption of the constitution. It was called the "department of foreign affairs," and the chief officer was entitled the "secretary of the department of foreign affairs." By the act of 1789, it was denominated the "department of state," and the principal officer therein, the "secretary of state."

safeguard is necessary? § 496. What officers are removable by impeachment?

§ 497. What auxiliary executive departments are there? § 498.

§ 499. The *secretary of state* performs such duties as are committed to him by the president, relating to foreign intercourse, and to public ministers and consuls ; or to negotiations with foreign powers ; to memorials and other applications from foreign ministers or other foreigners ; or to such other matters as shall be assigned to his department by the president. Through this officer, the views of the executive are officially expressed, and instructions given to diplomatic officers. Hence he is sometimes called the diplomatic agent. *Diplomacy* means the power or forms of negotiation ; or, the customs, rules, and privileges of ambassadors and other representatives at foreign courts.

§ 500. The *secretary of state* keeps the seal of the United States ; he makes out, records, and seals all civil commissions to officers appointed by the president, by and with the advice and consent of the senate, or by the president. He causes the laws, and all treaties ratified by the government, to be published in the newspapers designated for that purpose in the several states and territories. He causes to be published, at the close of every session, the necessary number (formerly eleven thousand copies) of the acts of congress to be distributed among the officers of the general government, and among the several states. (§ 250.) There are other duties, of a similar nature, which devolve upon this officer. The patent office is connected with this department. The secretary of state employs a chief clerk, and a number of subordinate clerks, whose compensation is fixed by law. The salary of the secretary of state is \$6,000 a year, of the chief clerk \$2,000.

§ 501. The *department of the treasury* existed under different forms, during the confederation, and for many years after the adoption of the constitution. It received its present organization by the act of March, 1817. The officers of this department are, a secretary, who is the head of the department, two comptrollers, five auditors, a treasurer, a register, and a commissioner of the land office ; each of whom is allowed one chief clerk, and such additional clerks as the business of their respective offices renders necessary.

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When was the state department established ? § 499, 500. What are the duties of the secretary of state ? What is *diplomacy* ? § 501. When,

§ 502. The *secretary of the treasury* prepares and lays before congress, at the commencement of every session, a report of the finances, containing a statement of the public revenue and expenditure during the past year, the value of the imports and exports for the same period, and estimates of the revenue and expenditures for succeeding years, and plans for improving the revenues. He also makes, annually, a statement of appropriations of money, and of sums remaining in the treasury. He superintends the collection of the revenue, and provides for building and keeping in repair the light houses, beacons, buoys, and public piers; and performs such other duties as appertain to his office. His salary is \$6,000 a year.

§ 503. The business of the *comptrollers* and *auditors* relates chiefly to examining and settling the public accounts, and to the recovery of debts due to the United States. The *treasurer* receives and keeps the money of the United States, and pays out the same on warrants drawn by the secretary of the treasury; and on the third day of every session, lays before congress copies of all accounts settled with the comptroller, and a true account of the state of the treasury. The *register* annually prepares statistical accounts of the commerce of the United States with foreign countries for the preceding year, to be laid by the secretary of the treasury before congress at every session. Such accounts state the goods imported and exported, and the navigation employed in the foreign trade. The *commissioner of the land office* superintends and performs such acts as relate to lands patented or granted by the United States. No person holding an office in this branch of the department, is allowed to have any interest in the purchase of any public land; nor may he take any fee or emolument for negotiating or transacting the business of the office, other than his salary. The salary of the first comptroller is \$3,500; the salaries of the other comptroller, auditors, treasurer and register, each \$3,000; of the chief clerk of each, \$1,700; of the commissioner of

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was the treasury department established? (See § 168.) When re-organized? What are its officers? § 502. What are the duties of the secretary? His salary? § 503. What are the duties of the comptrollers and auditors? The treasurer? The register? The commissioner of the land office? What are their respective salaries? § 504.

the land office, \$3,000 ; of the inferior officers of the same, from \$1,500 to \$2,000 each.

§ 504. The laws regulating the treasury department, prescribe the manner of keeping, settling, and collecting the public accounts. In cases of insolvency, debts due the United States on revenue bonds, must be first satisfied. The United States cannot be sued. A creditor who is refused payment must apply to congress.

§ 505. The *secretary of the war department* performs such duties as relate to military commissions, or to the land forces, and warlike stores of the United States ; and to such other matters respecting military or Indian affairs, as shall be assigned to his department. He is required to make an annual statement to congress of the expenditure and application of moneys drawn from the treasury for his department, and to make such suggestions to congress relative to the condition of his department as he shall think proper. His salary is \$6,000 a year. The chief clerk receives \$2,000. The heads of the several sub-departments receive, some \$2,500, others \$3,000 ; and their chief clerks from \$1,150 to \$1,700 each.

§ 506. In this department is transacted the business relating to military pensions. A *pension* is a yearly allowance to a person by the government, in consideration of past services. Laws have existed from the first organization of the government, granting pensions to persons disabled in the war of the revolution, in such manner as to render them unable to procure a subsistence by manual labor. After the close of the late war, persons were added to the pension list, who had been disabled by wounds while in the service during the late war. Pensions were also allowed, by the act of 1818, to all the soldiers of the revolution who had served nine months or longer in such war, and who were in necessitous circumstances. By the act of 1832, the pension list was so extended as to include all who had served in the army and navy, during the war of the revolution, for at least six months.

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What provision respecting creditors and insolvent debtors ? § 505. What are the duties of the secretary of war ? His salary ? Salaries of the subordinate officers ? § 506. What is a *pension* ? What has

§ 507. The *secretary* of the *department of the navy*, executes the orders of the president, relating to the procurement of naval stores and materials, and the armament, equipment, and employment of vessels of war, and all other matters pertaining to the naval establishment. Three officers are appointed by the president and senate, who constitute a *board of commissioners* for the navy, and who discharge the ministerial duties of the office of the secretary, and furnish all estimates of expenditures which the several branches of the service may require. The secretary of the navy receives for his salary \$6,000; chief clerk, \$2,000; three commissioners, each \$3,500; a secretary, \$2,000; and a chief clerk, \$1,600.

§ 508. The act of 1789 provides for the appointment of a meet person, learned in the law, to act as *attorney general* of the United States, who shall be sworn to execute faithfully the duties of his office. His duty is to prosecute and conduct all suits in the supreme court, in which the United States shall be concerned, and give his advice upon questions of law, when required by the president, or when requested by the heads of any of the departments. His salary is \$4,000 a year.

Ministers at foreign courts, and consuls, are also considered executive officers. Their duties have been described. (§ 483-485.)

## CHAPTER XXV.

### *Judicial Department.—Organization and Powers of the several Courts.*

§ 509. "THE judicial power of the United States shall be vested in one supreme court, and in such inferior courts, as the congress may, from time to time, ordain and estab-

been provided by the pension laws? § 507. What are the duties of the secretary of the navy? Of the other officers? § 508. What are the duties of the attorney general? His salary?

§ 509. In what courts is the judicial power vested? How is the

“lish. The judges of both the supreme and inferior courts, shall hold their offices during good behavior ; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.”—*Art. 3, sec. 1.*

§ 510. The necessity of a judicial department, and the general principles and organization of the judiciary system, have been noticed. (§ 93–106.) Under the confederation, this department was wanting in the general government. If it be necessary that there should be a judicial power, separate from the legislative and executive powers, it is equally necessary that the former should be co-extensive with the latter. If there be a national legislature and a national executive, there ought also to be a national judicial tribunal to judge of and interpret the laws made and executed. It would not, perhaps, be less improper to commit the power of making and executing laws for the union to the legislatures and executives of the several states, than to give the state courts jurisdiction in cases arising under the laws of the United States. What would be decided to be a violation of law or the constitution by a court of one state, might receive an adverse decision by that of another state. Hence the necessity of a national judiciary, to ensure a uniform interpretation of the laws and constitution.

§ 511. The institution of inferior courts is left to the discretion of congress. Their establishment, however, was contemplated ; being designed to preclude the necessity and inconvenience of having recourse to the supreme court in every case of national jurisdiction.

§ 512. “The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority ; to all cases affecting ambassadors, other public ministers, and consuls ; to all cases of admiralty and maritime jurisdiction ; to controversies to which the United States shall be a party ; to controversies between two or more states ; between a state and

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compensation of the judges regulated ? § 510. Why is a national judiciary necessary ? § 511. What is the use of inferior courts ? § 512. To what cases does the judicial power extend ? § 513. Why

“citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states; and between a state or a citizen thereof, and foreign states, citizens, or subjects.”—*Art. 3, sec. 2, cl. 1.*

§ 513. The cases here enumerated, are either those which are exclusively national in their character, or those in which a state or its citizens are at issue with another state or its citizens. It would therefore be highly improper to give to the state courts cognizance of such cases.

§ 514. “In all cases affecting ambassadors, other public ministers, and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the congress shall make.”—*Art. 3, sec. 2, cl. 2.*

§ 515. By *original* jurisdiction is meant, that a suit may *originate*, or commence, in this court. The grant of original jurisdiction to this court does not imply, however, that it has *exclusive* jurisdiction. If a case has been tried in an inferior court, and a party be not satisfied with the decision of the court, such party may *appeal* to the supreme court for trial and adjudication. In such trial, this court is said to have *appellate* jurisdiction. It has original jurisdiction in no other cases than those mentioned in the constitution. Its principal business is to re-judge cases that are brought from the circuit courts.

§ 516. When the constitution or laws of the United States come in question, in the highest court in a state, and are there judged of, a writ of error may be brought, whereby a case is transferred to the supreme court; and the decision of the state court may be approved or reversed. By writ of error, nothing is removed for re-examination but the law in the case; by appeal, the whole cause is entirely removed, and all the facts are submitted for a rehearing. Thus, all laws of the union may be finally judged of by one tribunal, and receive a uniform interpretation.

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should not state courts try such cases? § 515. What is *original* jurisdiction? *Appellate* jurisdiction? § 516. What is the difference

§ 517. The organization of the judiciary was provided for by the act of 24th of September, 1789. By this act were constituted the supreme court, and courts of inferior grade, called circuit courts, and district courts. The *supreme* court consisted of a chief justice, and six associate justices. The number of the latter has been recently increased to eight. This court holds annually, at the city of Washington, one session, commencing on the second Monday of January. The session usually continues about eight weeks.

§ 518. The United States are divided into nine circuits, in each of which two courts are held annually. The nine judges of the supreme court are so located as to bring one of them in each of the several circuits. A *circuit court* is composed of the judge of the supreme court residing within his circuit, and the judge of the United States' district court of the district in which such circuit court shall be held.

§ 519. This court tries causes between citizens of different states, between aliens and citizens, and those wherein the United States are a party. It also tries some cases in appeal from the district courts. It tries matters relating to affairs on the high seas. It tries all felonies punishable with death, as piracies, murders in forts and arsenals, and other territory ceded by the states to the general government for national uses, and on board ships of war in time of peace, and when not within the body of a county, or within a harbor. It has a grand jury and a petit jury.

§ 520. *District courts* are the lowest national courts in the United States. Every state constitutes at least one district, and some of the largest states, two. In each of these is a *district judge*, who has jurisdiction in cases arising under the laws made for the collection of duties; and in cases of penalties and forfeitures under the laws of the United States; and of crimes of inferior grade against the laws of the United States, committed on land and sea. In every district there is a *district attorney*, who institutes suits for

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in effect between a writ of error and appeal? § 517. When was the judiciary organized? How is the supreme court constituted? § 518. How are the circuit courts constituted? § 519. What is their jurisdiction? § 520. How are the district courts constituted? What is



the United States, and conducts prosecutions and trials on indictment: and there is a *marshal* of the district whose duties are similar to those of a sheriff. These courts hold annually four stated terms. This court has, in some cases, a jury.

The salary of the chief justice of the supreme court is \$5,000; of the associate judges, \$4,500 each.

§ 521. "The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed: but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed."—*Art. 3, sec. 2, cl. 3.*

§ 522. The importance of the institution of trial by jury as a safeguard to liberty, the manner in which juries are constituted, and their agency in trials, have been stated. (§ 120-125.) The right of trial by jury was esteemed by the colonists as one of the most valuable privileges enjoyed under the British constitution; and the infringement of this right constituted one of the grievances enumerated in the declaration of independence, which were alleged to justify the revolution. As might have been expected, therefore, the framers of the constitution failed not to secure this invaluable privilege, by express provision.

§ 523. The silence of the above clause in respect to civil cases, was by some supposed to imply that this right was secured only in cases of crime. Therefore, to place the question beyond cavil or doubt, an amendment was subsequently added to the constitution, which expressly guaranties the right in all civil suits, when the value in controversy shall exceed twenty dollars.

§ 524. It is also provided that the trial shall be held in the state in which the crime shall have been committed. This is intended to secure the trial of the accused among his friends and acquaintances; for it is not to be supposed

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their jurisdiction? What are the salaries of the judges of the supreme court? § 521. What provision does the constitution make concerning the trial of all crimes? § 522. How did the colonists regard the right of trial by jury? § 523. Is this right enjoyed in cases of crime only? § 524. Why must the trial be in the state in which the crime was committed?

that strangers will feel an equal concern in his case. Also, the inconvenience and expense of attending trial in a distant place, might deprive him of the benefit of an important witness. As crimes may be committed in territories beyond the limits of a state, or upon the high seas, it is necessary that congress should have power to provide for the trial in such cases.

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## CHAPTER XXVI.

### *Treason.*

§ 525. "TREASON against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court."—*Art. 3, sec. 3, cl. 1.*

§ 526. A general proneness to construe crimes of a less aggravated character into acts of treason, rendered it proper that the constitution should define the crime. The term, "levying war," is adopted from the English statute of treasons, and has that sense in the constitution which it was understood to have in the English statute. An assemblage of men for a treasonable purpose, such as war against the government, or a revolution of any of its territories, and in a condition to make such war, constitutes a levying of war.

§ 527. War can be levied only by the employment of force; troops must be embodied; men must be openly raised; but neither arms nor the actual application of force to the object, are indispensably requisite. To march in arms with a force marshalled and arrayed, committing acts of violence, in order to compel the resignation of a

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§ 525. In what does treason consist? What is necessary to convict of treason? § 526. Why is the constitution made to define treason? What is levying war? § 527. How only can war be

public officer, thereby to render ineffective an act of congress, is high treason. When war is levied, all who perform a part, however remote from the scene of action, being leagued in the conspiracy, commit treason. If one advise or command an overt act of treason, he is guilty *accessorily*. A mere conspiracy to levy war is not treason. A secret, unarmed meeting of conspirators, not in force, nor in warlike form, though met for a treasonable purpose, is not treason; but these offences are high misdemeanors.

§ 528. The constitution, with equal propriety, prescribes the proof requisite for conviction of treason. No evidence less than the testimony of two credible witnesses ought to be deemed sufficient to convict of a crime which deprives a person of life.

§ 529. "The congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the offender."—*Art. 3, sec. 3, cl. 2.*

§ 530. Congress, in pursuance of the power here granted, has declared the punishment of treason to be death by hanging; thus abolishing the barbarous modes of punishment, and cruel tortures, which were in former ages inflicted upon persons convicted of this crime.

§ 531. *Attainder* literally signifies a staining, or corruption. It here means a judgment or sentence against an offender. *Corruption of blood* by the common law of England, signifies the loss of inheritable qualities. A person attainted of felony, forfeits his estate; and he can neither inherit lands from his ancestors, nor transmit them to his heirs. This practice, so unreasonable, and so unjust to the innocent relatives of an offender, has been abolished by the constitution; and congress, in the exercise of its constitutional power, has declared, that "no conviction or judgment shall work corruption of blood, or *any forfeiture* of estate;" so that the forfeiture may be omitted, even during the life of the offender.

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levied? What else does treason comprehend? § 529. What prohibition is laid upon the punishment of treason? § 530. What punishment has congress designated? § 531. What is *attainder*? Corruption of blood? Is this practised in the United States?

## CHAPTER XXVII.

*Effect of State Records—Privileges of Citizens—Arrest of Fugitives—Admission of States—Disposal of Public Property—Guaranty of Republican Government, &c., to the States.*

§ 532. "FULL faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof."—*Art. 4, sec. 1.*

§ 533. This clause is intended to secure justice to persons in cases of removal into other states. A person, against whom a judgment may have been obtained by due process of law, might remove with his property into another state, where, in consequence of the remoteness of his residence, or the death or removal of material witnesses, he would be placed beyond the reach of justice by a new trial. It was necessary, therefore, that the records of the court in which the judgment was had, should be received in evidence, and have full credit in every court within the United States. A certificate under seal of the clerk of a court of record, may be transmitted to any state in the union; wherever the same shall be received, it shall be deemed evidence of the facts therein stated.

§ 534. "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."—*Art. 4, sec. 2, cl. 1.*

§ 535. This clause prohibits the states from enacting laws bestowing upon their own native citizens political and civil privileges which could not be enjoyed by those who were the natives of other states: or laws which should give privileges to citizens of some states in preference to those of other states. It does not, however, prohibit a state from enacting

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§ 532, 533. Why is the provision necessary, concerning the effect of public records in other states? § 534, 535. What is the object of the clause securing to the citizens of one state the privileges of citizens

that citizens removing into it from another state, shall reside in it a certain period of time, to be entitled to vote at elections.

§ 536. "A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime."

—*Art. 1, sec. 2, cl. 2.*

§ 537. Without such authority for the apprehension of criminals, the most atrocious crimes might be committed with impunity, as the perpetrators might easily effect their escape, and take shelter in an adjacent state.

§ 538. "No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."—*Art. 1, sec. 2, cl. 3.*

§ 539. This clause was designed to enable slaveholders to reclaim slaves who should escape into states in which slavery is not allowed. This they could not do before the constitution was adopted. A slave escaping into a non-slaveholding state, became free. In consenting to this clause, many members of the convention sacrificed their own feelings, and surrendered their own better judgment to the interests of the southern states. And it is believed this concession on the part of the free states has not a little aided in strengthening the system of slavery in the United States.

§ 540. The facility with which slaves are at present reclaimed, has led to great abuses. As slaves are delivered up, in many states, into the hands of claimants, on very slight proof, cases have occurred in which free colored men have been arrested, and, on testimony amounting scarcely to a well founded suspicion, have been surrendered to kidnappers, by whom they have been sold into perpetual bondage:

in the several states? § 536. What provision is made for arresting fugitive criminals? § 537. Why is it necessary? § 538. How are fugitive slaves reclaimed? § 539. For what purpose was this provision made? § 540. What abuse has this led to? § 541. How are the

To prevent abuses of this kind, it is deemed expedient that the right of trial by jury should be granted to every person claimed as a slave, to afford him a fair opportunity of establishing his freedom.

§ 541. "New states may be admitted by the congress into this union ; but no new state shall be formed or erected within the jurisdiction of any other state ; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress."—*Art. 4, sec. 3, cl. 1.*

§ 542. This provision was deemed necessary in view of the large extent of national territory possessed by the United States, and of the inconvenient size of some of the states then existing. Under this power, the number of the states has been doubled, thirteen new states having been added to the original thirteen ; four of which, Vermont, Kentucky, Tennessee, and Maine, have been formed from the old states, and the remaining nine, from the territorial possessions of the United States. The propriety of requiring the consent of the state legislatures and of congress, in the cases mentioned, is readily perceived.

§ 543. "The congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States ; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state."—*Art. 4, sec. 3, cl. 2.*

§ 544. The right of the general government to exercise authority over its own possessions, would seem scarcely to admit of doubt ; but this power under the confederation had been questioned ; and an express grant of such power was therefore inserted in the constitution. As the people within such territory neither possess the right of self-government, nor are subject to the laws of any state, congress ought to have power to make laws for their government.

§ 545. "The United States shall guaranty to every state

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admission and formation of new states restricted ? § 542. Why was this provision necessary ? § 543. How is the public property disposed of ? § 544. Why is the power to dispose of it given to congress ?

“ in this union a republican form of government, and shall  
 “ protect each of them against invasion ; and, on application  
 “ of the legislature, or of the executive, (when the legislature  
 “ cannot be convened,) against domestic violence.”—*Art. 4,*  
*sec. 4.*

§ 546. The states have a natural claim to the protection of the general government against any attempts that might be made to change their forms of government ; and also against invasion from abroad, and insurrections within their own borders, especially as they had surrendered to the general government the right of keeping a standing force for their defence. A state may make any alteration in its constitution that shall not change its republican form.

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## CHAPTER XXVIII.

*Provision for Amendments—Assumption of the Public Debt—Supremacy of the Constitution—Oaths and Tests—Ratification of the Constitution.*

§ 547. “ THE congress, whenever two thirds of both houses  
 “ shall deem it necessary, shall propose amendments to this  
 “ constitution, or, on application of the legislatures of two  
 “ thirds of the several states, shall call a convention for pro-  
 “ posing amendments, which, in either case, shall be valid,  
 “ to all intents and purposes, as part of this constitution, when  
 “ ratified by the legislatures of three fourths of the several  
 “ states, or by conventions in three fourths thereof, as the  
 “ one or the other mode of ratification may be proposed by  
 “ the congress ; provided that no amendment which may be  
 “ made prior to the year one thousand eight hundred and  
 “ eight, shall in any manner affect the first and fourth clauses  
 “ of the ninth section of the first article ; and that no state,

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§ 545. What do the United States guaranty to the states ? § 546. Why is this guaranty necessary ?

§ 547. How are amendments to be proposed and ratified ? § 548.

"without its consent, shall be deprived of its equal suffrage in the senate."—*Art. 5.*

§ 548. It was presumed by the framers of the constitution, that, notwithstanding the care with which it had been prepared, experience would discover it to be imperfect; or that, how well soever it might, at that time, serve the purposes of government, time and change of circumstances would render some alterations necessary. It was requisite, therefore, that some mode of amending it should be provided. But, lest the government should become unstable from too frequent alterations, modes of amendment were adopted which are calculated to guard against any alteration that is not necessary to remedy some palpable defect or inconvenience.

§ 549. The power to amend the constitution does not extend to every provision. No amendment might affect those clauses which secured the right to import slaves until the year 1808, and prescribed the mode of apportioning taxes; nor that which guaranties to each state an equality in the senate. Since the adoption of the constitution, amendments or additions have been, at three different times, proposed by congress, and ratified by the states. (§ 562, 584, 585.)

§ 550. Frequent attempts have been made, within a few years past, to propose amendments to the constitution; but, from the veneration in which the people hold this instrument, and from their jealousy of any attempts to change a form of government under which they have enjoyed unexampled prosperity, these attempts have proved unsuccessful. The people seem disposed to endure some trifling inconveniences, rather than to countenance a spirit of innovation, which, if encouraged, may in time produce a change in the fundamental principles of the government. Of the twelve articles styled 'amendments,' which have been incorporated into the constitution since its adoption, none but the last, (changing the mode of electing president and vice president,) repeals or makes void any part of the constitution originally adopted.

§ 551. By providing that amendments shall not even be

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Why was this provision deemed necessary? § 549. May any part of the constitution be altered? § 550. What has been the result of late attempts to amend? § 551. How is the constitution guarded against



proposed to the people; but by two thirds of both houses of congress, and that a convention for proposing amendments shall not be called by congress, until requested to do so by the legislatures of two thirds of the states; and by providing farther, that, before amendments thus proposed shall be valid, they must be ratified either by the legislatures of three fourths of the states, or by conventions or delegates chosen by the people of three fourths of the states; the constitution seems to be effectually guarded against unnecessary amendments or mutilations. The approval of the president is not required to a proposition by congress for an amendment of the constitution.

§ 552. "All debts contracted, and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation."—*Art. 6, cl. 1.*

§ 553. This clause recognizes the justice of the claims then existing against the government, and the moral obligation it was under to pay the debts which had been contracted, to carry on the war of independence. Indeed, one of the ends to be attained by a change of government, was some effectual provision for fulfilling the engagements of the nation previously entered into, and to which the public faith had been pledged in the articles of confederation. It was also intended to allay the fears of public creditors, who apprehended that a change of government would release the nation from its obligations.

§ 554. "This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding."—*Art. 6, cl. 2.*

§ 555. If the states were to regard their own laws as supreme, nothing would have been gained by union. In fact, the very idea of union forbids such a supposition. It was the

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needless alterations? § 552. What debts were assumed by the constitution? § 553. What were the objects of this clause? § 554. What is the supreme law of the land? § 555. Why is this provision neces-

want of supremacy in the general government under the confederation, that, more than any other consideration, called for a remedy. If the constitution or laws of each state were supreme in such state, the constitution of the United States could have no binding force, and there would be at the present time, no less than twenty-six *supreme* governments in the union, which is an absurdity. All laws, therefore, whether of the general government, or of the state governments, can have no validity after they shall have been pronounced by the supreme court of the nation to be repugnant to the constitution of the United States.

§ 556. "The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States."—*Art. 6, cl. 3.*

§ 557. The nature of an oath has been explained in another place. (§ 474.) The propriety of thus binding the conscience of a public officer has ever been esteemed necessary to secure fidelity to official trusts. Oaths ought not, however, to be used on trivial occasions, as their frequency tends to weaken a sense of their obligation.

§ 558. Religious tests are, however, properly prohibited. *Test* here means an oath or declaration in favor of or against certain religious opinions, as a qualification for office. In England, all officers, civil and military, were obliged to make a declaration against transubstantiation, and assent to the doctrines, or conform to the rules of the established church, before they could enter upon their official duties. Such a test is inconsistent with the principles of religious liberty: and as perfect freedom in matters of religion was the main object sought by our puritan fathers in their emigration to this country, it is not strange that their immediate descendants should forbid the introduction of religious tests into their form of government.

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sary? § 556. What officers are required to take oaths of office?  
 § 557. What effect are they designed to have? § 558. What is a religious test? Why is it improper? § 559. How many states were re-

§ 559. "The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same."—*Art. 7.*

§ 560. The constitution bears date the 17th day of September, 1787; and is signed by "GEORGE WASHINGTON, President, and deputy from Virginia," and one delegate or more from each of the thirteen states, except Rhode Island, which was not represented. On the 2d day of July, 1788, the ratification of New Hampshire, the ninth state, was received by congress. On the 14th of the same month, congress adopted a resolution appointing the first Wednesday of January, 1789, for choosing presidential electors in the several states, and the first Wednesday of February for the electors to meet in their respective states for the election of president. On Wednesday the 4th of March, 1789, proceedings commenced under the constitution. On the 30th of April, George Washington, having been unanimously elected, was inaugurated as president of the United States.

§ 561. The ratifications of North Carolina and Rhode Island were not received by congress until the following year. The ratification of the former was received in January, 1790; that of the latter in June of the same year.

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## CHAPTER XXIX.

### *Amendments to the Constitution.*

§ 562. THE conventions of several of the states having, at the time of their adopting the constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that additional declaratory and restrictive clauses should be added, congress, at the session begun and held in the city of New York, on the 4th of March, 1789, proposed to the

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quired to ratify the constitution? § 560, 561. What is the date of the constitution? When ratified? When did the government under it commence?

§ 562. Which of the amendments were first made? § 563. What

legislatures of the several states twelve amendments, only ten of which (the ten first following) were adopted.

§ 563. "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."—*Article 1, of Amendments.*

§ 564. To prevent the evils which had been known to flow from an alliance between the church and the state, and to secure to all, beyond question, the full and free enjoyment of religious freedom, all interference by the government in matters of religion, abridging in any degree the rights of conscience, by giving preference to any religious sect, is here expressly prohibited. Both religious and civil institutions are most secure, where religion derives no other support from government than what it receives from the protection of every citizen in its free exercise. But this protection it requires; for religious liberty cannot exist where its free enjoyment is not guaranteed by law.

§ 565. Freedom of speech and of the press is also essential in a free state. The most odious restrictions had been, in some countries, laid upon the press. It was regulated by prohibitions and licenses from the government. Publications, in some instances, were not allowed to be issued, until they had been approved by licensers. But as such restrictions are inconsistent with true freedom, the liberty of the press and of speech has been effectually guarded in this country. But no person has a right to use this liberty to the injury of others in their good name or estate.

§ 566. "A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed."—*Art. 2.*

§ 567. To deprive the people of this right, would be nothing less than to surrender them to the mercy of invaders from abroad and tyrants at home.

§ 568. "No soldier shall, in time of peace, be quartered

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is the first amendment? § 564, 565. What are the objects of this article? § 566. What is the second article? § 567. What is its object? § 568. What is the third article? § 570. What right is secured by the

"in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law."—

*Art. 3.*

§ 569. One of the grievances endured by the people of the colonies, and which was made the subject of complaint to the British king, was the quartering of large bodies of armed troops among them, to awe them into subjection. This circumstance doubtless gave rise to this provision.

§ 570. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."—

*Art. 4.*

§ 571. Nothing is more reasonable than that warrants for searches or seizures should not be issued except upon probable cause. A *general* authority given to an officer to search wheresoever he pleases, or to arrest whomsoever he will, would expose many innocent persons to much annoyance and perplexity; and their characters might suffer from suspicion of guilt, caused by the simple fact of their having been obliged to submit to such searches or seizures.

§ 572. "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."—*Art. 5.*

§ 573. "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed; which district shall have been pre-

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fourth article? § 571. Why is this provision necessary? § 572, 573. What privileges are secured to persons charged with crime, by the fifth

“viously ascertained by law ; and to be informed of the nature and cause of the accusation ; to be confronted with the witnesses against him ; to have compulsory process for obtaining witnesses in his favor ; and to have the assistance of counsel for his defence.”—*Art. 6.*

§ 574. The above provisions for the security and protection of property and life, are founded on the principles of common law and common justice. Some of them have been noticed in the preceding part of this work, and the others are so easily understood, as to need no explanation. That which secures to a person accused of crime, the assistance of counsel for his defence has its origin in humanity, being designed for the benefit of those who have not the means of employing counsel for themselves. In such cases, the courts assign to the accused party the necessary counsel, at the public expense.

§ 575. “In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved ; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.”—*Art. 7.*

§ 576. “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”—*Art. 8.*

§ 577. Bail is intended as a privilege to persons arrested upon a charge of crime, by which they may enjoy the liberty of their persons until the time of trial. (§ 127.) But the sum in which a person shall be required to give bail, may be fixed so high as to render it impossible to procure the necessary sureties ; thereby depriving the prisoner of the benefits of this privilege, and often subjecting the innocent to a long confinement. As the proper amount of security depends upon the nature and aggravation of the offence, it is left to the court to determine the sum. For the same reason, the precise degree of punishment to be inflicted for crimes committed, must be determined by the judge or court.

§ 578. “The enumeration, in the constitution, of certain

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and sixth articles ? § 575. What right is secured by the seventh article ? § 576. What is provided by the eighth article ? § 577. What is its object ? § 578. What is declared in the ninth article ? § 579.

"rights, shall not be construed to deny or disparage others retained by the people."—*Art. 9.*

§ 579. This article was designed to remove the scruples of many, whose solicitude for the rights of the states induced the ill-founded fear, that, because certain rights belonging to the people are enumerated in the constitution, those not included in the enumeration must, by natural inference, be considered as given up to the general government.

§ 580. "The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."—*Art. 10.*

§ 581. The design of this article is somewhat similar to that of the preceding. As the people are the original source of all power, and as the constitution is an instrument of limited powers, it follows as a consequence, that the powers not delegated to the general government, must remain with the people or the state governments.

§ 582. It has been observed, that, under the confederation, each state retained every power not "*expressly* delegated to the United States." (§ 419.) It is worthy of note, that, in the above article, the word "*expressly*" is omitted, in order to give a wider latitude of construction. For if this prohibition be allowed to exclude from the general government all powers not granted in express terms, it will not only nullify the "power to make all laws necessary and proper for carrying into execution all the powers vested by the constitution in the government of the United States," but it would strike from the statute book as unconstitutional, a great number of the most necessary and wholesome laws. It is evident, therefore, that the article will not admit such a construction. (§ 420, 421.)

§ 583. "The judicial power of the United States shall not be construed to extend to any suit, in law or equity, commenced or prosecuted against one of the United States, by citizens of another state, or by citizens or subjects of any foreign state."—*Art. 11.*

What is its object? § 580. What is declared in the tenth article? § 581. What is the design of this article? § 582. Wherein does this article differ from the confederation? § 583. What is the subject of

§ 584. This article of amendment was proposed at the second session of the third congress, and duly ratified by the states. It was intended to prevent the liability of a state to be prosecuted by private persons, the citizens of other states. It does not, however, prohibit the supreme court from re-examining cases brought by appeal or by writ of error from a state court. It applies only to *original* suits against a state.

§ 585. The 12th article of amendment, which changed the mode of electing the president and vice president, was proposed at the first session of the eighth congress. It will be found in its appropriate place, in the 2d article of the constitution. (§ 461.)

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the eleventh article ? § 585. To what does the twelfth article of amendment relate ?



## PART THIRD.

### CIVIL JURISPRUDENCE OF THE UNITED STATES

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#### CHAPTER I.

##### *Rights of Persons.—Absolute Personal Rights.*

§ 586. THE rights of persons are usually considered to be of two sorts, absolute and relative. By *absolute* rights are meant those which belong to men as individuals or single persons, or those which would belong to their persons in a state of nature, and which every man is entitled to enjoy whether out of society or in it. These rights are resolved into the right of personal security, the right of personal liberty, and the right to acquire and enjoy property. Rights called *relative* are those which are incident to men as members of society, and as standing in various relations to each other.

§ 587. But although a distinction clearly exists between these two classes of rights, they appear to be imperfectly distinguished by the terms absolute and relative: because, the rights termed absolute, though they are founded in the law of nature, and are inherent and unalienable, may be forfeited and lost by the commission of crime. Besides, what would be the rights of man, were he excluded from all society? The idea of right always presupposes some existing *relation* between persons. Both classes are therefore in some respects relative, and neither is in all respects absolute. Yet, as the one class, being founded in the primary, universal, and permanent relations of social nature, cannot be

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EXERCISES.—§ 586. Into what two classes of rights are the civil rights of men considered to be divided? What are *absolute* rights? What are *relative* rights? § 587. In what consists the difference be-

alienated by voluntary transfer ; and as the other class arises from the civil and domestic relations, which a man has the liberty and capacity of forming and changing, they have been generally, and with a considerable degree of propriety, distinguished as absolute and relative.

§ 588. To protect mankind in the enjoyment of their rights, is the object of law. The law existing in this country, by which the rights of individuals are secured, is the *common law of England*, which was brought hither by our ancestors. This law has been adopted, and declared in force, by the constitutions of some of the states, and by statute in others ; and where it has not been so explicitly adopted, it is nevertheless to be considered the law of the land, in all cases in which it has not been altered by statute or usage.

§ 589. The absolute rights of personal security and personal liberty, were privileges peculiarly dear to English freemen. The colonists claimed these privileges as natural and unalienable rights, of which they, as British subjects, could not be deprived. These rights were frequently asserted and declared during their colonial dependence ; and provisions guarantying these rights have been transcribed from the fundamental acts of the British parliament, into our national and state constitutions.

§ 590. The *personal security* of every citizen is farther protected by the law by which a man, on showing reasonable cause, may require his adversary to be bound to keep the peace. And if violence has been committed, the offender may be prosecuted in behalf of the state, and punished ; and he is also bound to render to the party aggrieved compensation in damages.

§ 591. The law affords additional protection to this right by permitting a man to exercise the natural right of self-defence. Homicide is pronounced justifiable in cases in which it is necessary in self-defence, against a person who comes to commit a known felony with force against one's person, habitation, or property, or against the person or prop-

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tween absolute and relative rights? § 588. By what law are these rights secured? § 589. From what acts were the provisions securing these rights transcribed into our constitutions? § 590. How is the personal security of our citizens protected? What is personal security? § 591. What additional protection is afforded? What is *homi*

erty of those who stand in near domestic relations. But homicide is not strictly justifiable in defence of a private trespass, nor upon the pretence of necessity, when the party is not free from fault in bringing that necessity upon himself.

§ 592. Personal security includes the preservation of a man's good name from injury by slander or detraction. The *slander* of a person by words, is a civil injury for which damages may be obtained. The injury consists in falsely and maliciously charging another with the commission of some public offence, or the breach of some public trust, or with any matter in relation to his trade or vocation; which, if true, would render him unworthy of employment; or with any other thing by which special injury is sustained.

§ 593. A slander communicated by writing or printing, is calculated to have a wider circulation, to make a deeper impression, and to become more injurious. Words, therefore, may be libellous if printed, which would not be actionable if spoken. (§ 256.) A *libel* is defined to be a malicious publication in printing or writing, signs or pictures, tending either to blacken the memory of one dead, or the reputation of one alive, and expose him to public hatred, contempt, or ridicule. And the law considers it a public as well as a private injury, and makes the offender both liable to a private suit for damages, and answerable to the state by indictment.

§ 594. It is the established principle of the English law, that the truth of the matter charged as libellous, cannot be shown by way of justification; because, whether true or false, it is equally dangerous to the public peace: and it is presumed that the publication is made with a malicious intent. The judicial decisions seem to have established the same doctrine in this country, except where it has been controlled by constitutional and legislative provisions.

§ 595. But to give a wider latitude to the liberty of the press, special provision has been made in several of the states by statute, and in others by their constitutions, in favor of

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*cide*? (See § 728.) § 592. What is *slander*? § 593. What is the difference between slander and libel? What is a *libel*? How are these offences punishable? § 594. Does it excuse a man, in law, to show the truth of the matter charged as libellous? § 595. What al-

giving the truth in evidence in public prosecutions for libels. The constitution of New York declares, that the truth may be given in evidence to the jury ; and that if it shall appear to the jury that the matter charged as libellous is true, and that it was published with good motives, and for justifiable ends, the party shall be acquitted. Public opinion in this country seems to be pretty generally in favor of this principle.

§ 596. The opinion seems to prevail, that, in private actions for damages, the truth may, in all cases, be pleaded in justification ; inasmuch as private action rests upon the injury sustained. There exists, however, a contrariety of opinion on this point ; and indeed, it is not easy to perceive any good reason for this distinction between cases of public and private prosecution. Justice would seem to require, that, in either case, the object of inquiry should be the good or evil intentions of the publisher.

§ 597. The right of *personal liberty* is guarded with equal effect, by the national constitution, to which the laws and constitution of every state must necessarily conform. Every restraint upon a man's liberty the law considers an imprisonment ; and whenever a person is detained with or without due process of law, unless for treason or felony specially expressed in the warrant of commitment, or unless such person be a convict, or legally charged in execution ; he is entitled to his writ of *habeas corpus*. (§ 123.)

§ 598. The statute of New York requires that the application for this writ shall be to the supreme court, or chancellor, or a judge of the court, or other officer having the powers of a judge at chambers ; and that it be by petition, in writing, signed by or on behalf of the party. It must also state the grounds of the application ; and the facts must be sworn to. If the person on whom the writ is served shall not promptly, without sufficient excuse, produce the party imprisoned, he is liable to be forthwith attached and committed to close custody, until he shall have obeyed the writ.

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teration of the English law has been made in this country ? § 596. What various opinions prevail in this country on the subject of slander and libel ? § 597. What is personal liberty ? How is it secured ? § 598. What is a writ of *habeas corpus* ? How is this writ applied for,

§ 599. If a person has been discharged upon *habeas corpus*, he cannot be reimprisoned for the same cause ; but it is not deemed the same cause, if the discharge was granted for the want of sufficient proof, or for a defect in some of the proceedings in the case. The law makes the reimprisonment of a party duly discharged, a misdemeanor, subjecting the offender to fine and imprisonment, and a penalty of \$1,250, to be paid to the party aggrieved.

§ 600. Persons confined upon a criminal charge, who shall not have been indicted, must be discharged within twenty-four hours after the discharge of a grand jury of the county, unless cause be shown for the delay. And prisoners indicted, unless tried at the next court after the indictment is found, are entitled to be discharged, unless the public prosecutor show satisfactory cause for delay. If there be good reason to believe that any person illegally confined, will be carried out of the state, before he can be relieved by *habeas corpus*, both the prisoner, and the party detaining him, may be brought up for examination, before the court or officer authorized to issue the writ, to be dealt with according to law. The above provisions in relation to *habeas corpus*, from the Revised Statutes of New York, are, with some slight exceptions, the law of every state in the union.

§ 601. Freedom of religious opinion and worship, is one of the absolute personal rights secured by the constitutions and laws of this country. The general government is expressly prohibited from making any law respecting the establishment of religion, or prohibiting its free exercise, (§ 563,) and the state constitutions have adopted the same principle.

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granted, and served ? What is its effect ? § 599. In what cases may a man be reimprisoned, after a discharge, upon this writ ? § 600. What does the law farther provide respecting the confinement and discharge of persons imprisoned ? § 601. How is religious freedom secured ?

## CHAPTER II.

*Domestic Relations.—Husband and Wife.*

§ 602. MARRIAGE, to be valid in law, requires the consent of parties capable of contracting. No persons are capable of binding themselves in marriage, until they have arrived at the age of consent, which, by the common law of the land, is fixed at fourteen years in males, and twelve in females. Idiots and lunatics cannot legally contract marriage.

§ 603. No person can remarry while the former husband or wife is living. Such second marriage is null and void, except in the following cases: when the husband or wife of the party who remarries, remains without the United States for five years together, or when one of the married parties shall have absented from the other for five successive years, and the one remarrying not knowing that the other, who had been absent, was living within that time; or when the person remarrying was, at the time of such marriage, divorced by the sentence of a competent court; or if the former husband or wife of the party remarrying had been sentenced to imprisonment for life.

§ 604. In any but the above excepted cases, a second marriage is not only void, but in most, if not all of the states, it is a statute offence, punishable by imprisonment. Bigamy, more properly termed polygamy, is in some countries made a capital crime. *Bigamy*, in the strict sense of the word, is the crime of having two wives; but it is often used as synonymous with *polygamy*, which means the having of any number of wives or husbands more than one.

§ 605. Though no penalty applies to the cases above excepted, yet, if the former husband or wife be living, though the fact be unknown, and there be no divorce duly pro-

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§ 602. At what ages are parties capable of contracting marriage? Who cannot contract? § 603. In what cases are second marriages lawful and valid, while the former husband or wife is living? § 604. What are *bigamy* and *polygamy*? How punished? § 605. When

nounced, or the first marriage has not been duly annulled ; the second marriage is void. Where there is no statute regulation, the principle of the common law in all civilized and Christian countries, is, that nothing but death, or a decree of a competent court, can dissolve the marriage tie.

§ 606. Marriage between near relatives is unnatural and unlawful, as leading to a confusion of rights and duties ; but it is not easy to ascertain the precise point at which the laws of nature have ceased to discountenance the union. The statute of New York declares marriage between the ascending and descending lines, and between brothers and sisters of the half as well as the whole blood, to be incestuous and void, and to be indictable offences, punishable by imprisonment in a state prison for a term not exceeding ten years.

§ 607. A simple consent of the parties is all that is required to render marriage valid ; and this consent may be declared before a magistrate, or simply before witnesses, or subsequently acknowledged ; or it may be inferred from continual cohabitation and reputation as husband and wife. Regulations have been made by law, in some of the states, for the due solemnization and proof of marriage ; but when such provisions have not been made, the contract is, in this country, under the government of the English common law.

§ 608. A lawful marriage can be dissolved only by the death of one of the parties, or by divorce. In some of the states, no divorce is granted but by a special act of the legislature ; in others, intolerably ill usage, or wilful desertion, or unheard of absence, will authorize a decree for a divorce.

§ 609. The husband and wife are in law regarded as one person ; and the husband, upon marriage, becomes seised of the freehold of his wife, and takes the rents and profits during their joint lives. It will be an estate in him for his

is a second marriage void, even in the above excepted cases ? \* § 606. What marriages are, by the laws of New York, declared incestuous and void ? How punished ? § 607. What renders a marriage contract valid ? § 608. By what authority, and for what causes, may divorces be granted ? § 609. What effect has marriage upon the

own life, if he shall die before his wife ; and in that event, she takes the estate again in her own right. If the wife dies first, and there are no children, her heirs succeed immediately to the estate. If there has been a child born alive, the husband takes the estate for life, and on his death, it goes to the wife or her heirs. During the continuance of the life estate of the husband, he sues in his own name for an injury to the profits of the land ; but for an injury to the inheritance, the wife must join in the suit.

§ 610. The husband acquires, by marriage, a right to all the chattels real of his wife, as leases for years ; and he may, without her, sell, assign, or otherwise dispose of the same as he pleases ; and they may be sold on execution for his debts. If he makes no disposition of the chattels real in his life time, he cannot devise them by will ; and the wife, after his death, takes them in her own right. If he shall survive his wife, he will acquire an absolute right to such chattels real.

§ 611. All other personal property also, belonging to the wife at the time of her marriage, becomes the property of the husband ; and on his death, it goes to his representatives. And he has power to sue for debts due to her by bond, note, or otherwise, which are termed *choses in action* ; and when recovered and reduced to possession, the money becomes his own.

§ 612. The husband is answerable for her debts before coverture ; but if they are not recovered during coverture, he is discharged. *Coverture* is the condition of a married woman, who, by the laws of the land, is in the power of the husband. If the husband dies before the debts are collected, his representatives are not liable ; but the wife remains liable after her husband's death.

§ 613. The husband is bound to provide for his wife the necessaries suitable to her situation, and his condition in life ; and he is obliged to pay any debts which she may contract for such necessaries : but for any thing beyond

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real estate of a wife ? § 610. What effect upon her chattels real ? § 611. What effect upon her personal property ? What are *choses in action* ? § 612. Is a husband liable to pay the debts of his wife contracted before marriage ? What is *coverture* ? § 613. In what cases



necessaries, he is not chargeable. If the husband abandons his wife, or they separate by consent, or if he sends her away and refuses to provide for her wants ; or, if she be so treated as to afford reasonable cause for her to leave his house ; he is liable to fulfil her contracts for necessaries, even though he should have forbidden persons to trust her. If they live together, and the wife goes beyond what is prudent and reasonable, the tradesman trusts the wife at his peril.

§ 614. A husband, dying in the lifetime of his wife, may, by will, cut her off from all his estate but a right of dower, that is, the right to have, for life, the use of one third of all the real estate which he owned during marriage, and whereof she has not barred herself by joining with him in a deed. A wife cannot devise her land by will ; but she may dispose by will, or by act in her lifetime of her separate personal estate, settled upon her, or held in trust for her. A will made by a female while single, who afterwards marries, becomes void.

§ 615. Settlements made upon a wife, in pursuance of an agreement in writing, entered into before marriage, are valid both against creditors and purchasers. A settlement after marriage may be good, if made upon a valuable consideration. A voluntary settlement after marriage upon a wife or children, without a valid agreement previous to the marriage, is void against creditors. But if the person be not indebted at the time, the settlement, if made without fraudulent intent, is good against after creditors.

§ 616. The husband and wife cannot be witnesses for or against each other ; but when the wife acts as her husband's agent, her declarations may be admitted in evidence to charge the husband.

§ 617. A wife has no remedy for ill treatment from her husband till his conduct becomes criminal. And if she can

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is a husband liable for contracts made by his wife ? § 614. What are their powers respecting the disposal of property by will or otherwise ? § 615. How may settlements upon a wife be made valid ? § 616. May husband and wife be made to witness for or against each other ? § 617. What remedy does the law provide against ill treatment from her husband ?

make oath before a magistrate, that she is in fear of personal violence, he may be required to give bonds to keep the peace. But as the husband is the guardian of the wife, and bound to protect and maintain her, the law gives him a reasonable superiority and control over her person; and, if her conduct be such as to require it, he may even put gentle restraints upon her liberty.

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### CHAPTER III.

#### *Parent and Child—Infants—Guardian and Ward—Master and Apprentice—Hired Servants.*

§ 618. THE duties of *parents* to their children, as being their natural guardians, consist in maintaining and educating them during the season of youth and infancy; and the parent is obliged, during the minority of the child, which, in law, means *infancy*, or, of an age under twenty-one years, to provide for his support and education; and he may be sued for necessities furnished under just and reasonable circumstances. The father is bound to support his minor children, if he be of ability, even though they have property of their own; but this obligation, in such a case, does not extend to the mother.

§ 619. The legal obligation of a father to maintain his child, ceases as soon as the child is of age, unless the child becomes chargeable to the public as a pauper; but the husband is not liable for the maintenance of the child of his wife by a former husband, nor for the support of his wife's mother. But if he takes the wife's child into his own house, he is responsible for the maintenance and education of the child so long as it lives with him.

§ 620. A father is not bound by the contract of his son,

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§ 618. What are the duties of parents to their children? What is meant by the minority of a child? § 619. How far does a father's obligation to maintain his own, or his wife's children, extend? § 620. How far is he bound for his son's contracts? What authority has he

even for articles suitable and necessary, unless an actual authority be proved, or the circumstances be sufficient to imply one; or unless a clear omission of duty on the part of the father renders assistance to the child necessary. The father has a right to the labor or services of his children, and he may sue any other person for the value of their labor performed for such person. The father is also entitled to the custody of their persons; and when they are improperly detained, he may obtain such custody by writ of *habeas corpus*.

§ 621. Parents have a right to exercise all discipline necessary for the discharge of the duties they owe to their children. But courts of justice may, when the morals, or safety, or interests of the children require it, withdraw infants from the custody of their parents, and place them elsewhere.

§ 622. The duties of *children* to their parents, are obedience and assistance. In the absence of any authority in the common law to enforce these duties, the Revised Statutes of New York have provided, that a parent may, by will, disinherit his ungrateful children; and compel the children, if they are able, to support and relieve their poor, lame, old, or impotent parents, who cannot maintain themselves.

§ 623. *Infants* or *minors*, can do no act to the injury of their property, which they may not avoid or rescind, when they arrive at full age. Minors who contract debts, will be obliged to pay them, if they promise to do so, after they shall have become of age. Contracts for necessities are binding upon an infant; and he may be sued and charged in execution on such contract, provided the articles were necessary under the circumstances in which he was placed. But if he lives with his father or guardian, whose care and protection are duly exercised, he cannot bind himself even for necessities.

§ 624. Minors are answerable for crimes; and they may

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as to the labor and persons of his children? § 621. When may children be taken from their parents? § 622. Under what obligations are children to their parents? § 623. What are the powers and obligations of infants, or minors, as to contracts? § 624. May minors be punished for crimes? How are their contracts affected by their

be indicted and tried. Infancy does not protect fraudulent acts. If a minor takes an estate, and agrees to pay rent, he will be liable for its payment when he shall have arrived at his majority. If he receives rents, he cannot demand them again when of age. If he pays money on contract, and enjoys the benefit of it, and then avoids it when he comes of age, he cannot recover back the consideration paid. And if he avoids an executed contract when he comes of age, on the grounds of infancy, he must restore the consideration.

§ 625. The relation of guardian and ward, is nearly the same as that of parent and child. A father may dispose of the custody and tuition of his child during his minority, or for a less time, to another person, who thereupon becomes the *guardian*, and the infant is called *ward*. By the statute of New York, a minor having no guardian, may, at the age of fourteen years, apply to a surrogate for the appointment of such guardian as the minor may nominate. If the minor be under the age of fourteen years, a relative or other person, in his behalf, may so apply for the appointment of a guardian. A guardian who has charge of a minor's property, as well as of his person, is required to keep safely such property, and to deliver the same to his ward when he arrives at full age.

§ 626. By the statute of New York, male infants, and unmarried females under eighteen years of age, with the consent of proper persons, may bind themselves, in writing, to serve as *apprentices* to some art or trade; if males, until the age of twenty-one years, and if females, until the age of eighteen years, or for a shorter time. Consent shall be given by the father; or, if dead, or not in legal capacity, by the mother; and if she refuse, or be not in legal capacity, then, by a guardian duly appointed; or, if there be no guardian or other person, by the overseers of the poor, or two justices of the peace of the town, or a judge of the county court.

§ 627. County superintendents of the poor may bind

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becoming of age? § 625. What is the relation between guardian and ward? How is this relation created? § 626. To what age, and by whose consent, may apprentices be bound? § 627. What obliga-

out any child under the ages above specified, who may be sent to the county poor house, or who is become chargeable to the county. In all indentures by the officers of any town or county, binding poor children as apprentices or servants, a covenant must be inserted to teach them to read and write: and if a male, the general rules of arithmetic. For refusal to serve and work, infants may be imprisoned in jail, until they shall be willing to serve as apprentices or servants. The above law in relation to master and apprentice, is supposed to contain the substance of the English statute law on the subject.

§ 628. The relation between a *master* and a *hired servant*, rests altogether upon contract. The one is bound to render the service, and the other to pay the stipulated consideration. But if the servant hired for a definite term, leaves the service before the end of it without reasonable cause, he loses his right to wages for the period he served. And he may be dismissed for cause, before the expiration of the term. The master is bound by the acts of his servant, in respect either to contracts or injuries, when the act is done by the authority of the master. If the servant does an injury fraudulently, while in the employment of his master, both have been held liable in damages; and if a servant employs another servant to do his business, and, in doing it, the servant so employed is guilty of an injury, the master is liable.

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## CHAPTER IV.

### *Right of Property.—Real Property.*

§ 629. A MATERIAL object of government is to secure the right to acquire property, and to make use of it.

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tions are imposed upon masters and apprentices in indentures by public officers? § 628. What relation subsists between a master and hired servant? How far is the former bound by the contracts of the latter? § 629. What is real property? Personal property? § 630. How

Property, is either personal or real; the former consisting of what is movable from place to place, the latter, of lands and things built or growing thereon. Fruit, grain, trees, minerals, &c. become personal property, when separated from the land.

§ 630. Every citizen of the United States is capable of holding lands, and of taking the same by descent, devise, or purchase, and of aliening or conveying away such estate. Estates in land are divided into estates of inheritance, estates for life, estates for years, and estates at will and by sufferance. An *estate of inheritance* is termed a fee simple, or fee. A *fee* is an estate of inheritance in law, belonging to a person, and transmissible to his heirs. No estate is deemed a fee, unless it may continue forever. *Fee simple* is a pure inheritance, clear of any qualification or condition, and gives a right of succession to all the heirs generally, provided that they shall be of the blood of the first purchaser, and of the person last seised.

§ 631. An *estate for life*, is an estate conveyed to a person for the term of his natural life. Estates for life and estates of inheritance, are called *freeholds*. An *estate for years* is a right created by a lease, or a contract for the possession and profits of land, for a determinate period, with the recompense of rent. An *estate at will* is where one man lets land to another, to hold at the will of the lessor. An *estate at sufferance* is where one has come into the possession of land by lawful title, but holds over by wrong, after his interest has ceased. He is not entitled to notice to quit, and he is not liable to pay rent. The landlord may dispossess such tenant whenever he pleases.

§ 632. The real estate of any person who shall die without devising the same, shall descend in the following manner: (1.) to his lineal descendants; (2.) to his father; (3.) to his mother; and (4.) to his collateral relatives. If any of the children of an intestate be living, and any be dead,

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are estates in land divided? What is an *estate of inheritance*? What is meant by a *fee* in this use of the term? Has the word fee any other meaning? § 631. What is an *estate for life*? An *estate for years*? An *estate at will*? An *estate by sufferance*? § 632. What is the order in which the real estate of an intestate descends to his

the inheritance shall descend to the children living, and to the descendants of those who are dead ; so that such descendants may inherit the share which their parent would have received, if living.

§ 633. If the intestate shall die without lawful descendants, and leave a father, the inheritance goes to the father, unless the inheritance came to the intestate on the part of the mother. If he leaves neither father nor descendants, the inheritance descends to the mother ; but if he leaves also a brother or sister, the mother holds it only during her life ; and on her death, it descends to his brothers and sisters or their descendants. If he leaves neither descendants nor father nor mother, the estate descends to his brothers and sisters or their descendants.

§ 634. But if there be no heir to take the inheritance in either of the above cases, the same shall descend to the brothers and sisters of the father, if the property shall have come to the intestate on the part of the father. If his father has no brothers and sisters, the estate descends to brothers and sisters of his mother. If the property comes to the intestate on the part of his mother, her brothers and sisters have precedence ; and if the inheritance has not come to the intestate, on the part of either the father or mother, it descends, in equal shares, to the brothers and sisters of the intestate.

§ 635. Persons become possessed of real estate in various ways ; but evidence of such possession consists, usually, in a writing called a *deed*, signed and sealed by the person who had a right to execute it, acknowledged by a proper person, and recorded in the public registry. Every deed conveying real estate, though it is, when duly executed, binding as between the parties, is nevertheless void as against any person who may subsequently purchase the conveyed estate in good faith, and for a valuable consideration, and whose deed shall be first recorded. Deeds, mortgages, and other securities in the nature of mortgages, are recorded by the clerks of the several counties in books prepared for that purpose.

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heirs ? 633, 634. What is the order of descent when the intestate has no lawful descendants ? § 635. How is the proof of the title to real estate obtained ? What is the effect of a deed without being re-

§ 636. A mortgage is the conveyance of an estate, by way of pledge for the security of debt, and is to become void on the payment of it. The condition upon which the land is conveyed, is usually put in the deed of conveyance, but the condition, or defeasance, may be contained in a separate instrument; and if the deed be absolute in the first instance, and the defeasance be executed subsequently, it will relate back to the date of the principal deed, and connect itself with it, so as to render it a security in the nature of a mortgage.

§ 637. In order, however, to render the deed a security against subsequent purchasers and mortgagees, the deed and defeasance should be recorded together. An omission to have the defeasance registered, would make the estate, which was conditional between the parties, absolute against every person but the original parties and their heirs. The practice of placing the conveyance in fee, and the condition or defeasance which is to qualify it, in separate instruments, is liable to accidents and abuse, and injury to the mortgagee, and should be discouraged.

§ 638. When the condition of a mortgage shall have been fulfilled, the person in whose custody it may be, shall cause it to be discharged, whenever there shall be presented to him a certificate, signed by the mortgagee, acknowledged or proved, and certified as the law prescribes to entitle conveyances to be recorded, specifying that the mortgage has been paid. And every certificate of discharge shall be recorded.

§ 639. When a deed or a mortgage has been executed, before it shall be recorded, the party executing it must acknowledge, before a commissioner of deeds, that he executed the same; and the commissioner subscribes a certificate of the acknowledgment on the margin or back of the instrument. In New York, commissioners of deeds, of

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corded? § 636. What is a mortgage? How is it executed? § 637. What rule is to be observed in the registering or recording of a deed of mortgage, and the defeasance? § 638. How is a mortgage discharged, when its conditions are fulfilled? § 639. What is essential to a deed or mortgage before it is recorded? By whom are acknowledgments taken?



whom there are at least two in each town, are appointed by the board of supervisors and judges of the county courts. Judges of the several courts in the state, also, are authorized to take such acknowledgments. If a married woman signs a deed, the acknowledgment must be made to the commissioner apart from her husband, that she executed the same freely, and without compulsion from her husband. If any married woman refuses to execute a conveyance, she retains her estate in dower against any person claiming the conveyed premises.

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## CHAPTER V.

### *Personal Property.—Contract of Sale.*

§ 640. PERSONAL property is divided into chattels real and personal. *Chattels real* concern the realty, as a lease for years of land ; and the duration of the time is immaterial. It is only personal estate, if it be for a thousand years. There are, also, many chattels which, though of a movable nature, yet, being attached to the freehold, and contributing to its value and enjoyment, go with it ; as the shelves and fixtures in a house, and the posts and rails of an enclosure. But many things are now treated as personal property which seem, in a degree, to be attached to the freehold.

§ 641. It has been established as a general rule, that things which a tenant has fixed to the freehold, for the purposes of trade or manufactures, may be removed, when the removal does not cause any material injury to the estate. Thus fats, coppers, tubs, and partitions belonging to a soap boiler, have been removed. Chimney pieces, and even wainscot, put up by a tenant, or a cider mill and press erected by him, may be removed, if it can be done without

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§ 640. What is personal property ? What are *chattels real* ? § 641. What chattels attached to a freehold may be removed ? and what

material injury to the freehold. On the other hand, iron stoves, fixed to the brick work of the chimneys of a house, have been adjudged to pass with the house as a part of the freehold. The right of removal depends upon the mode of annexation of the article, and the effect which its removal would have upon the premises.

§ 642. A title to personal property may be acquired in various ways. A person has a right to all that his property produces. Such are the fruits of the earth, the increase of animals, and the increase of stock invested in trade or manufactures. Property is also acquired by one's own act or power; as his literary property, consisting of maps, writings, and books, mechanical inventions, produced by his intellectual and manual labor. Goods and chattels are obtained also by transfer by act of law; as by judgment on a recovery by law in an action of trespass or trover; and by gift, which, in some cases, gives a valid title.

§ 643. To give validity to a gift, there must be a delivery, at least so far as the subject is capable of delivery: if the thing cannot be delivered, there must be an act equivalent to it. The donor must part with both the possession and dominion of the property. If the thing given be a *chose in action*, that is, a debt due by bond, note, or otherwise, the law requires an assignment, and the transfer must be actually executed. And gifts of goods and chattels, as well as of lands, with intent to delay and defraud creditors, are void, as against the person to whom the fraud would be prejudicial. All deeds of gift, and all transfers or assignments of goods or things in action, made in trust for the use of the person making the same, are void, as against creditors, existing or subsequent.

§ 644. It is a principle in law, that no man can be deprived of his property without his consent; and that the honest purchaser is not safe under a defective title. No man can transfer to others the right to property which he does not himself possess. The title to property acquired by theft or violence, does not pass from the true owner;

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may not? § 642. In what ways may title to personal property be acquired? § 643. In what cases are gifts valid? In what cases are they void? § 644. Can a man be deprived of his property without

and he has a just claim to the property against any person purchasing the same.

§ 645. Whether the possessor of land, who has taken possession in good faith, but who subsequently finds that his title was not obtained from the rightful owner, can recover the value of beneficial improvements which he may have made upon the land, is a question that has been much discussed. It is said to be the English law, and the common law of this country, that the owner can receive his land by ejectment, without paying for the improvements made upon it. The improvements are considered as annexed to the freehold; and every possessor makes such improvements at his peril.

§ 646. Conflicting opinions have been expressed on this point in the courts of England and of this country; and statute provisions exist in some of the states, allowing, in certain cases, to the occupant, compensation for the improvements. But these are pronounced, by the author of "Commentaries on American Law," encroachments upon the rights of property, as known and recognized by the common law of the land. And he farther observes: "There are but very few cases in which a person may not, with reasonable diligence and cautious inquiry, discover whether a title be clear or clouded, and 'let the buyer beware' is a maxim of the common law, which is exceedingly conducive to the security of right and title."

§ 647. But private property must, in some cases, be made subservient to the public welfare. If a public highway be out of repair, a passenger may lawfully go through an adjoining private enclosure. It is lawful also, to demolish houses to prevent the spreading of a conflagration. The legislature has the control of private property for public uses. The Revised Statutes of New York authorize the cutting of roads through cultivated lands of individuals without their consent; provided it be done by town officers of their own appointment, upon previous application of twelve

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his consent? § 645, 646. Can a person obtain compensation for improvements which he has made on land which he has occupied under a defective title? § 647. May private property ever be taken or used for the public welfare? May it be taken without compensation?

freeholders ; and the value of the lands, and amount of damages, must be assessed by a jury, and paid to the owner. It is an equitable provision in our constitutions, that private property shall not be taken for public use without just compensation.

§ 648. A *contract* is an agreement between two or more persons, by which the parties agree to do, or not to do, a particular thing. Contracts are *executory* when the stipulations remain to be executed ; or when one party agrees to sell and deliver, at a future time, for a stipulated price, and the other agrees to accept and pay. Contracts are express or implied. They are express, when parties contract in express words, or by writing ; and implied, when an act has been done which shows that the parties must have intended to contract ; as when a person employs another to do some service, it is presumed that the party employing intended to pay for the labor performed.

§ 649. To render a contract binding, there must be a legal consideration ; something must have been paid, or something given or done, as an inducement to the fulfilment of the contract. A contract, to be valid, requires, (1.) that the thing sold has actually existence, and is capable of delivery ; (2.) that a price be fixed, or susceptible of being ascertained, without farther negotiation between the parties ; and, (3.) that there be a mutual consent of the parties to the contract, which is binding when a proposition made by one of the parties is accepted by the other.

§ 650. In the sale of a chattel as one's own property, if it be at the time in the possession of another, and there be no covenant or warranty of title, the party buys at his peril. But if the seller has possession of the article, and he sells it as his own property, he is understood to warrant the title. A fair price implies a *warranty of title*.

§ 651. With regard to the *quality* of the thing sold, the seller is not bound to make good any deficiency, unless he

§ 648. What is a *contract* ? What is an *executory* contract ? When are they express, and when implied ? § 649. What is requisite to the validity of a contract ? § 650. What is the law concerning the *warranty of title* ? § 651. What concerning the *quality* of the property sold ? What is the law of *moral* obligation in this case ?

expressly warranted the goods to be sound and good, or unless he made a fraudulent representation concerning them. But *moral* obligation rests on every person knowingly to conceal no fault in an article he sells. And if there be an intentional concealment or suppression by one party of a material fact, in a case wherein the other has not equal access to means of information, the contract is void. But when both have equal means of information, and neither says nor does anything to impose on the other, a disclosure of facts is not necessary to make the contract valid.

§ 652. When the terms of sale are agreed on, and the bargain is struck, the contract is absolute without the actual delivery; and the property, and risk of accident to the goods, vest in the buyer. He is entitled to the goods on payment or tender of the price, and not otherwise, when nothing is said at sale as to the time of delivery or the time of payment; for, though the vendee acquires the right of *property* by contract of sale, he does not acquire the right of *possession*, until he pays or tenders the price. But if the goods are sold upon credit, and nothing is said as to the time of delivering the goods, the vendee is immediately entitled to the possession. To make a contract of sale valid, there must be a delivery, or a tender of it, or payment, or tender of payment, an earnest given, or a memorandum in writing signed by the party to be charged; and if nothing of this kind takes place, it is no contract, and the owner may dispose of his goods as he pleases.

§ 653. The statutes of New York contain express provisions on the subject of contracts. No agreement that is not to be performed within one year from the time of making it; no special promise to answer for the debt, default, or miscarriage of another person; nor an agreement or promise upon consideration of marriage, except mutual promises to marry, shall be valid, unless such agreement, note, or memorandum thereof, expressing the consideration, be in writing, subscribed by the party to be charged. Con-

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§ 652. When does the buyer's right of *property* commence? When the right of *possession*? What is necessary to render a contract of sale valid? § 653. What contracts, in the state of New York, are required to be in writing?

tracts for the sale of goods for the price of fifty dollars or more, are void, unless they be in writing; or unless the buyer receive a part of the goods or evidences, or pay, at the time, a part of the purchase money.

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## CHAPTER VI.

### *Bailment.*

§ 654. THE word *bailment* is from *bail*, a definition of which has been given in another place. (§ 127.) *Bailment*, in law, is a delivery of goods in trust, upon agreement that the trust shall be executed, and the goods restored by the bailee, when the purpose of the bailment shall have been answered.

§ 655. If a person receives goods to be kept for the bailor, and to be returned on demand, without recompense, he is to keep them with reasonable care; and unless there be a special undertaking to the contrary, he is responsible only for gross neglect, or for a violation of good faith. Gross neglect is a want of that care which every man of common sense takes of his own property. If a person undertakes, without recompense, to do some act for another in respect to the thing bailed; for instance, if he undertakes to carry an article from one place to another, he is responsible only for gross neglect, or a breach of faith.

§ 656. Whether a mandatary renders himself liable for the non-performance of a gratuitous undertaking, is a question on which writers on common law differ in some degree. But perhaps the prevailing opinion among us is, that a mandatary, that is, one who undertakes to do an act for another without reward, is not answerable for omitting to do the act, but is responsible only when he attempts to do it, and does it amiss. In other words, he is responsible for

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§ 654. What is the meaning of *bailment*? Of bailor and bailee?

§ 655. In what cases is a bailee liable for damages to goods kept for the bailor? § 656. In what cases does a mandatary become liable?

misfeasance, but not for nonfeasance, even though special damages be averred.

§ 657. If a person loans to another for use without reward, any article, as a horse, carriage, or book, and the article be lost or destroyed, without blame or neglect imputable to the borrower, the owner must abide the loss. But the borrower must apply the thing to the use for which it was borrowed; and he must not keep it beyond the time limited, nor permit another person to use it.

§ 658. If property be pledged as security for a debt or engagement, the pawnee is bound to take ordinary care, and is answerable only for ordinary neglect; and if the goods should then happen to be lost, he may, notwithstanding, resort to the pawnor for his debt. If he derives any profit from the use of the property, he must apply the profits, after deducting necessary expenses, towards the debt.

§ 659. There is another species of bailment, the hiring of property for a reward. The hirer is bound to use the article with due care and moderation, and not to apply it to any other use, or detain it for a longer period than that for which it was hired. If the article be injured or destroyed without any fault on the part of the hirer, the loss falls on the owner, for the risk is with him.

§ 660. In cases where work or care is bestowed on the thing delivered, for a recompense, the workman for hire must answer for ordinary neglect of the goods bailed, and apply a degree of skill equal to the undertaking; for every man is presumed to possess the skill requisite to the due exercise of the art or trade he assumes. If he performs the work unskilfully, he is responsible in damages. As, if a tailor receives cloth to be made into a coat, he is bound to perform it in a workmanlike manner.

§ 661. Forwarding merchants are responsible for want of good faith, and of reasonable care and ordinary diligence, and not to any greater extent, unless the business and duty of carriers be attached to their other character.

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What is a mandatary? § 657. How does a borrower become liable? § 658. What is the law in relation to property pledged or pawned? § 659. What in relation to property hired for a reward? § 660. What in relation to articles on which labor is bestowed? § 661. What in

§ 662. But with regard to innkeepers, the rule is more strict. In general, they are responsible for the acts of their servants and for thefts, and are bound to take all possible care of the goods and baggage of their guests, on the ground of the profit they receive for their entertainment. But the innkeeper is not considered responsible for loss occasioned by unavoidable accident, or by superior force, as robbery.

§ 663. A person who carries goods for hire, in a particular case, and not as a common carrier, is only answerable for ordinary neglect, unless he expressly assumes the risk of a common carrier. But if he be a common carrier, he is in the nature of an insurer, and is answerable for accidents and thefts, and even for loss by robbery. He is answerable for all losses, except in cases of the act of God, and public enemies.

§ 664. Proprietors of a stage coach do not warrant the safety of passengers as common carriers; they are responsible only for the want of due care. But as public carriers, they are answerable for the loss of a box or parcel of goods, though ignorant of the contents. But if the owner be guilty of fraud or imposition, as by concealing the value or nature of the article, or deludes the carrier by treating the parcel as of no value, he cannot hold him liable for the loss of his goods. Carriers by water are liable to the same extent as carriers by land. But the rule does not apply to postmasters.

## CHAPTER VII.

### *Principal and Agent.—Partnership.*

§ 665. AGENCY is founded upon a contract, expressed or implied, by which one party intrusts to the other the manage-

relation to forwarding merchants? § 662. What respecting innkeepers? § 663. What respecting special and common carriers? § 664. What respecting proprietors of stage coaches? Carriers by water? Postmasters?

§ 665. Upon what is agency founded? How far is a principal bound



ment of some business, and by which the other assumes to do the business, and to render an account of it. The acts of a general agent, or one employed by another to do his business of a particular kind, will bind his principal, so long as he keeps within the general scope of his authority, though he may act contrary to his private instructions. But an agent, constituted for a particular purpose, and under a limited power, cannot bind his principal if he exceeds his power. The special authority must be strictly pursued; and whosoever deals with an agent, constituted for a special purpose, deals at his peril, when the agent passes the limits of his power.

§ 666. If a person intrusts his watch to a watchmaker to be repaired, and the watchmaker sells the watch, the owner is not bound by the sale. A factor, or merchant, who buys and sells upon commission, or as agent for others, may sell on credit, and the principal must abide by the bargain, and the agent incurs no risk. There are some cases in which a factor sells on credit on his own risk; as when he acts for an additional premium; and the principal may call on him without first looking to the vendee. A factor cannot pledge the goods of his principal as security for his own debts.

§ 667. If an agent would excuse himself from responsibility, he must show that he disclosed his principal when he made the contract, and that he acted on his behalf, so as to enable the party with whom he deals to have recourse to the principal, in case the agent had authority to bind him. And if the agent even buys in his own name, but for the principal, and without disclosing his name, the principal is bound as well as the agent, provided the goods come to his use. An agent, ordinarily, has no right, without express authority, to employ a sub-agent to do his business, without the knowledge or consent of his principal.

§ 668. An agent has a right to retain possession of property until his demand shall be satisfied. This right is called a *lien*. A *general lien* is the right to retain property for a

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by the acts of his agent? § 666. In what cases may a factor bind his principal? In what cases does he act on his own risk? § 667. What is necessary to exonerate an agent from responsibility? § 668. What

general balance of accounts ; but a *particular* lien is a right to retain it only for a charge on account of labor employed, or expenses bestowed, upon the identical property detained. This is a privilege given by law to persons engaged in occupations necessary for the accommodation of the public. Upon this ground common carriers and innkeepers have a lien on property intrusted to them. A tailor has a lien upon the cloth put in his hands to be worked up into a garment. But he cannot hold it for any debt previously contracted.

§ 669. *Partnership* is a contract of two or more persons, to place their money, labor, or skill, in lawful commerce or business, and to divide the profit, and bear the loss, in certain proportions. It is a partnership if one advances the funds, and another furnishes the personal services, and is to share in the profits. Though there be no express articles of copartnership, if persons have a mutual interest in the profits and loss, or if they hold out themselves to the world as joint traders, they are held responsible as partners to third persons, whatever may be the nature of their connexion ; and each member of the firm is answerable for the whole amount of the debts. But a party may by agreement receive, by way of rent, a portion of the profits of a farm or tavern ; or a clerk or agent may receive a portion of the profits of sales as a compensation for labor, without becoming a partner.

§ 670. Parties must be jointly concerned in the future sale of their goods, in order to constitute a partnership. A joint purchase, with a view to separate and distinct sales by each person on his own account, is not sufficient. Several persons, not having contracted together as partners, may, by a common agent employed for the purpose, purchase goods in the name of one of them only, and divide the purchase among themselves, without becoming partners, or jointly answerable to the seller in that character, if they are not to be jointly concerned in the resale of their shares. If a purchase be made on separate account, and the interests of the purchasers be afterwards mingled, with a view to a joint

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is a *lien*? In what cases are persons allowed this privilege? § 669. What is a *partnership*? Are express articles of copartnership necessary to hold persons responsible as partners? § 670. How may

sale, the partnership commences at the time when the shares are brought into a common stock.

§ 671. The members of an association may mutually agree, that any one of their number shall neither contribute his money or labor, nor partake of the profits; yet if he lends his name to the company, he becomes liable as a partner for the debts contracted. The parties may regulate their concerns as they please with regard to each other, but they cannot, by any agreement among themselves, release each other from their obligations as partners. This rule is founded on principles of general policy, and is calculated to prevent the frauds to which creditors would otherwise be exposed. A partner who should conceal his name so as not to be known as a partner when the debt is contracted, is equally liable when discovered, if he shares in the profits of the trade.

§ 672. Incorporated companies are not, in law, partnerships; and the stockholders are not personally responsible for the debts or engagements of the company: their property is affected only so far as they have an interest in the company.

§ 673. The act of each partner relating to the partnership, is considered the act of all, and binds all. But if a bill or note be drawn by one partner in his own name only, without appearing to be on partnership account, he alone is bound, though it were made for a partnership purpose. But if the bill be drawn by one partner in his own name, on the firm, or on partnership account, the act of drawing has been held to amount to an acceptance of the bill by the drawer in behalf of the firm, and to bind the firm as an accepted bill.

§ 674. A partnership ceases as soon as the business is completed; and if the partnership be without a definite period, any partner may withdraw when he pleases, and dissolve the partnership; but if the terms of partnership be

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several persons jointly purchase goods without becoming jointly responsible? What future act will make them partners? § 671. Can the members of an association, by any arrangement between themselves, release each other from responsibility? § 672. How far are stockholders in incorporated companies responsible? § 673. How far is one partner bound by the acts of the others? § 674. How and when

definite, it cannot be dissolved before the expiration of the term, without the mutual consent of the partners, except by the death, insanity, bankruptcy, or some other inability of one of the parties, or by judicial decree of the court of chancery in certain cases.

§ 675. In the state of New York, there is a law by which *limited partnerships* may be formed, consisting of one or more persons jointly and severally responsible, who are called *general* partners, and one or more persons who furnish certain funds to the common stock, but who are liable only for the amount of the fund furnished, and who are called *special* partners. The names of the special partners are not to be used, nor do they transact any business for the firm. Before such a partnership can act, a register thereof, with a certificate signed by the parties, must be registered in the clerk's office of the county; and the terms of the partnership must be published for six weeks. Due publication must also be made, for four weeks, of the dissolution of the partnership by the act of the parties, prior to the time specified in the certificate.

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## CHAPTER VIII.

### *Bills of Exchange.—Promissory Notes.*

§ 676. A *bill of exchange* is a written order or request, from one person to another, to pay to a third person a certain sum of money. If A, living in New York, wishes to receive \$1000, which await his orders in the hands of B, in London, he applies to C, going from New York to London, to pay him \$1000, and take his draft on B for that sum, payable at sight. This is an accommodation to all parties.

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may partnerships be dissolved, before the expiration of the stipulated term? § 675. What law exists in New York in relation to general and special partners?

§ 676. What is a *bill of exchange*? Give an example to illustrate its operation. Which party is the drawer? The drawee? The ac-

A receives his debt by transferring it to C, who carries his money across the Atlantic, in the shape of a bill of exchange, without danger of robbery or loss; and on his arrival at London, he presents the bill to B, and is paid. A, who draws the bill, is the *drawer*; B, to whom it is addressed, is the *drawee*; and, on accepting it, he becomes the *acceptor*. C, to whom the bill is made payable, is called the *payee*. As the bill is payable to C, *or his order*, he may, by endorsement, direct the bill to be paid to D. In that case C becomes the *endorser*, and D, to whom the bill is endorsed, is called the *endorsee*, or *holder*.

§ 677. A *check* is, in form and effect, a bill of exchange. It is not a direct promise on the part of the drawer to pay; but he is answerable if the drawee fails to pay. A check payable *to bearer*, passes by delivery: and the bearer may sue on it as on an inland bill of exchange.

§ 678. No precise time is fixed by law for presenting bills to the drawee for acceptance. A bill payable at a given time after date, may be presented at any time before the day of payment; but if presented, and acceptance be refused, it is dishonored, and notice must be given to the drawer. A bill payable sixty days after sight, means sixty days after acceptance; and such a bill, as well as a bill payable on demand, must be presented in a reasonable time, or the holder must bear the loss proceeding from his neglect.

§ 679. The acceptor of a bill is the principal debtor; and the drawer is the surety; and nothing will discharge the acceptor but payment or a release. If the acceptor alters the bill on accepting it, and the holder consents to the alteration, it is a good bill as between the holder and acceptor, but it is vacated as against the drawer and endorsers.

§ 680. A *promissory note* is a written promise to pay or deliver to another a sum of money. If it be made payable to him or his order, or to bearer, it is called *negotiable*; and it may be sold or transferred to any other person, who

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ceptor? The payee? The endorser? The endorsee? § 677. What is a *check*? What is its effect? § 678. How soon after they are drawn must bills be presented? § 679. What is the effect of altering a bill by the acceptor? § 680. What is a *promissory note*? When

has the same authority to sue for and collect the money, as the original promisee. When a note is payable *to bearer*, it passes without endorsement; but when it is payable to a person *or his order*, such person, the promisee, must endorse it by writing his name on the back of it, before any other person can receive the money. If the name of the payee or endorsee be left blank, any *bona fide* holder may insert his own name as payee. The words *value received* are usually inserted in a note, but the note is good without them.

§ 681. If a bill has been accepted, demand of payment must be made when the bill falls due; and it must be made by the holder or his agent upon the acceptor, at the place appointed for payment, or at his residence, or upon him personally, if no particular place be appointed. The acceptor is allowed three days after the bill falls due, to pay; which are called *days of grace*. Three days of grace apply also to promissory notes. A bill or note payable on demand, or in which no time of payment is expressed, is not entitled to the days of grace.

§ 682. If the third day of grace falls on Sunday, or some other day of public rest, the demand of payment must be made on the day preceding. If the demand be not made on the last day of grace, the drawer of a bill, and endorser of a note, are discharged. As to the particular time of the day at which the demand must be made, it is said to be unreasonable to demand payment before the expiration of the day; but this question is governed, in a degree, by the custom of the place; and if, in a commercial city, payments are to be made at the banks, demand must be made within bank hours.

§ 683. The holder of a note can recover upon it, though he received it of a person that had stolen or robbed it from the true owner; provided he took it innocently, in the course of trade, for a valuable consideration, and with due caution.

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is it negotiable? What is the difference between its being payable *to bearer* and to a person's *order*? § 681. When and where must payment be demanded on accepted bills? In what cases are three days of grace allowed on notes and bills? § 682. What is the consequence of neglecting to demand payment on the last day of grace? § 683. In what cases are notes void? What is *usury*? § 684. How

There are said to be but two cases in which a bill or note is void in the hands of an innocent endorsee or holder : one is when the note is given for money lost at gaming ; and the other, when it is given for a usurious debt. *Usury* is an agreement, upon the loan of money, to receive the same again with a greater interest than that which is fixed by law.

§ 684. The acceptance of a bill may be in writing, or by parol. *Parol* means, assurance given by word. If a person, in writing, authorizes another to draw a bill, and stipulates before the drawing of the bill, to honor it after it shall have been drawn ; and if the bill be afterwards drawn, and taken by a third party ; it amounts to an acceptance. A parol promise to accept a bill already drawn, or thereafter to be drawn, is binding if the bill be purchased in consideration of the promise. In the state of New York, however, it is specially provided, that no acceptance is binding, unless it be in writing.

§ 685. If a note be made payable in any species of property other than cash, it is not negotiable. If such note be not paid according to the conditions therein expressed, the maker becomes liable to pay the same in cash. But in either case, if it passes to a third person, he can sue it only in the name of the person to whom it was executed, who is allowed to offset any account or claim which he may have against the promisee. And any note, if it be taken after it is become due, the buyer takes at his risk ; and the promisor may offset against it any payment which he may have made to the original holder.

§ 686. That the drawer and endorsers of a negotiated note or bill may be held responsible, the holder must show that a demand has been made, or that due diligence has been used to get the money of the maker of the note, or the drawee of a bill ; and he must also give reasonable notice of their default to the drawer and endorsers. The object of this notice is to afford an opportunity to the drawer and endorsers, to obtain security from those to whom they must re-

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must the acceptance of bills be signified ? What is *parol* ? § 685. What is the nature of a note not payable in cash ? § 686. What is requisite to hold drawers and endorsers of negotiated paper responsi-

sort for indemnity. The notice must be given by the first convenient, practicable mail that goes on the day next to the third day of grace ; or, it must at least be put into the post office for that purpose, if possible. Where the parties live in the same town, personal notice must be given, or a special messenger must be sent to the dwelling house or place of business of the party to be charged.

§ 687. Officers are appointed in all commercial places, called *notaries public*. When a foreign bill is to be presented for acceptance or payment, the demand is usually made by a notary ; and in case of refusal, his certificate of the presentment of the bill, and of the refusal, is legal proof of the fact in any court. This certificate is called a protest, which means, *for proof*. A protest must be noted on the day of the demand ; but it may be drawn up in form at a future period. A bill drawn in one state, upon a person in another, seems to be regarded as a foreign bill requiring a protest.

§ 688. But notaries may also demand acceptance and payment of inland bills of exchange, and promissory notes, and protest the same for non-acceptance or non-payment. No protest, however, is legal evidence in court, except in the case of a foreign bill of exchange. Yet it is expedient, in many cases, to employ notaries, when evidence is to be preserved, because they are easily to be found when wanted as witnesses. And in the state of New York, the original protest of such notary, under seal, is evidence, in case of his death, insanity, or absence, so that his personal testimony cannot be obtained. Notaries in this state are appointed by the governor and senate wherever they shall think proper.

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ble ? How must the notice be served ? § 687. What is a *notary public* ? What are his duties ? What is a *protest* ? § 688. May notaries demand payment on inland bills and promissory notes ? In what cases is a protest admitted as evidence in courts of law ?



## CHAPTER IX.

*Rights of Landlord and Tenant.*

§ 689. As special enactments have been made in all, or nearly all of the states, in respect to the rights of landlord and tenant, and as the laws of all the states cannot be given, this chapter has been taken from the Revised Statutes of New York. Although the law of this state differs, in many of its details, from the laws of other states, the most essential of the provisions which here follow, may be considered the common law of this country.

§ 690. Every contract for leasing for a longer period than one year, or for the sale of any lands, or any interest in lands, is void, unless the contract or some memorandum thereof, expressing the consideration, be in writing, and be subscribed by the party by whom the lease or sale is to be made, or by an agent lawfully authorized.

§ 691. Leases for a term exceeding three years, in order to be valid, must be recorded in the same manner as conveyances of real estate, except in the counties of Albany, Ulster, Sullivan, Herkimer, Dutchess, Columbia, Delaware, and Schenectady.

§ 692. Every conveyance of any estate, or interest in lands, or the rents and profits of lands, and every charge upon lands, or upon the rents and profits thereof, made or created, with intent to defraud prior or subsequent purchasers for a valuable consideration, shall be void, as against such purchasers.

§ 693. Whenever there is a tenancy at will or by sufferance created, by the tenant's holding over his term, or otherwise, the same may be terminated by the landlord's giving one month's notice in writing to the tenant, requiring him to remove therefrom.

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§ 689. From the laws of which state is this chapter taken? § 690. In what cases must land contracts be in writing? § 691. In what cases must leases be recorded as deeds? § 692. What is the effect of a fraudulent conveyance? § 693. How may a tenant holding over his term be dispossessed, in case of tenancy at will or by suffer-

§ 694. Such notice shall be served by delivering the same to such tenant, or to some person of proper age residing on the premises; or if the tenant cannot be found, and there be no such person residing on the premises, such notice may be served by affixing the same on a conspicuous part of the premises, where it may be conveniently read.

§ 695. At the expiration of one month from the service of such notice, the landlord may re-enter, or maintain ejectment, or proceed in the manner prescribed by law, without any farther or other notice to quit.

§ 696. If a tenant shall give notice of his intention to quit the premises, and shall not accordingly deliver up the possession thereof, at the time specified in the notice, such tenant, his executors or administrators, shall thenceforward pay to the landlord, his heirs or assigns, double rent, which shall be continued to be paid during the time the tenant shall continue in possession.

§ 697. If a tenant for life or for years shall wilfully hold over any lands or tenements after the termination of such terms, and after demand made, and one month's notice duly given, he shall be liable to pay to the person kept out of possession, or his representatives, at the rate of double the yearly value of the lands or tenements so detained, for the time he shall so hold over; and he shall also pay all special damages to which the person kept out of possession shall be subjected by reason of such holding over.

§ 698. When any certain services, or certain rent reserved out of any lands or tenements, shall not be paid when due, the person entitled thereto may *distrain* for the same. But no distress may be made for any rent for which a judgment has been recovered in a personal action.

§ 699. A landlord may secure rent due, when any goods or chattels liable to distress for rent are seized under execution, by giving notice, at any time before the sale of the goods by virtue of the execution, either to the party in whose

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ance? 694. How must notice be served? § 695. How does the landlord proceed after the end of the month? § 696. What if a tenant gives notice of intention to quit, but refuses? § 697. What if a tenant for life or for years refuses to quit after due notice? § 698. By what process may landlords collect rent when due and not paid? § 699, 700. How may a landlord secure rent due when property liable

favor the execution shall be issued, or to the officer holding the same, of the amount claimed by the landlord to be due, and the time during which it accrued; and by accompanying such notice with his own affidavit, or that of his agent, of the truth thereof.

§ 700. Upon receiving the notice and affidavit, the officer holding the execution, shall levy the amount of rent claimed to be due, in addition to the sum directed to be raised on the execution, and shall pay the same to the landlord; but the amount of rent to be levied shall not exceed one year's rent. If there be a deficiency of goods and chattels to satisfy both the execution and rent, the amount levied shall be first applied to the satisfaction of the rent; and the remainder shall be applied upon the execution.

§ 701. If a tenant against whom an execution is issued, shall deny that rent is due to his landlord, as claimed, he may prevent the levying thereof, by virtue of such execution, by delivering to the officer holding it, a bond, with two sufficient sureties, executed to the landlord, in a penalty of double the amount of rent claimed, with a condition that all rent due shall be paid, not exceeding one year's rent of the premises.

§ 702. If a landlord, under the foregoing provisions, claims more rent than is due to him, and if the excess be collected, the tenant may sue for and recover of the landlord double the amount of such excess. And in all cases in which rent is pretended to be due, when none is due, the owner of goods distrained may recover against the person so claiming, double their value.

§ 703. An officer making distress for rent, must give notice thereof, with the cause of the distress, the amount due, and an inventory of the articles taken, by leaving the same with the tenant, or in case of his absence, at the chief mansion house, or at some other notorious place on the premises.

§ 704. At the expiration of five days from the day on which the notice was served, if the amount of rent due, with costs of distress, be not paid, and the goods distrained be

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to distress is under execution? § 701. What if the tenant in this case denies that rent is due? § 702. What if a landlord collects more rent than is due him? § 703, 704, 705. Describe the process of collecting

not replevied, the officer shall summon two disinterested householders, who, under oath administered by the officer shall appraise the goods and chattels distrained, and state the same in writing.

§ 705. Upon the appraisement being made, the officer shall give five days' notice of sale, by affixing such notice on a conspicuous part of the premises, and in two public places in the town; and on the day, and at the place appointed, he shall sell the goods at public auction, at the best price that can be obtained; and shall apply the proceeds to the satisfaction of the costs and rent, and pay the surplus, if any, to the owner of the goods.

§ 706. If distress be made for rent justly due, any irregularity or unlawful act afterwards done by the party distressing, shall not render the distress unlawful; but the party aggrieved may recover for the special damages sustained by such irregularity or unlawful act, with costs of suit.

§ 707. Every person entitled to any rents dependent upon the life of any other, may, notwithstanding the death of such other person, have the same remedy by action or by distress, for the recovery of all arrears of such rent, that shall be behind and unpaid at the death of such other person, as he might have had if such other person was in full life.

§ 708. If a tenant for life, who shall have rented any lands to another, shall die on or after the day when any rent shall have become due, his executors or administrators may recover from the under tenant the whole rent due: if he shall die before the day on which the rent is to become due, they may recover the proportion of rent which accrued before his death.

§ 709. When a tax on real estate shall have been collected of an occupant or tenant, and the tax ought to have been paid by the landlord or any other person, the occupant or tenant may recover, by action, the amount of such tax, or retain the same from any rent due or accruing from him for the land so taxed.

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rent by distress. § 706. What is the effect of irregular proceedings? § 707. What remedy has the landlord in case of tenant's death? § 708. What is provided respecting the collection of rent of an under tenant in case of the death of the first tenant? § 709. What remedy has a tenant who has paid a tax which ought to have been paid by the land-

§ 710. Whenever a half year's rent or more shall be due, and no sufficient distress can be found, the landlord may bring an action of ejectment for the recovery of the premises: but the tenant may, at any time before judgment, stay proceedings, by tender of all the rent, and all costs and charges incurred by the lessor.

§ 711. At any time within six months after a landlord shall have taken possession of the premises recovered in action of ejectment, the premises shall be restored to the tenant or lessee, on payment or tender to the landlord or lessor, of all rent in arrear, and all costs and charges incurred by the lessor.

§ 712. If a tenant in arrear for rent shall desert the premises, without leaving thereon any goods subject to distress, any justice of the peace of the county may, at the request of the landlord, view the premises; and on being satisfied that the premises have been deserted, he shall affix a notice upon a conspicuous part of the premises, requiring the tenant to appear and pay the rent due, at the time specified in the notice, not less than five, nor more than twenty days after the date thereof.

§ 713. At the time specified, the justice shall again view the premises; and if the tenant appear, and deny that rent is due to the landlord, all proceedings shall cease. If the tenant, or some one for him, shall not appear, and pay the rent, and there shall not be sufficient distress upon the premises, then the justice may put the landlord into possession of the same.

§ 714. The goods and chattels of a tenant may be distrained after they shall have been removed from the premises, whether the removal have been made before or after the rent shall have become due. If the rent be due at the time of the removal, or shall become due within thirty days thereafter, the goods may be seized within the said thirty days after such removal. If no rent be due, or become due within that time, then the seizure may be made at any time within thirty

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lord? § 710. In what case may the landlord eject a tenant in arrears? § 711. How may tenant regain possession? § 712, 713. If a tenant in arrear desert the premises, leaving no goods subject to distress, what procedure must be taken? § 714. What is provided in case goods

days after the rent shall have become due ; provided such seizure be made within six months after the removal of the goods : but no goods shall be liable to be seized which shall have been previously sold in good faith, and for a valuable consideration, to any person not privy to such fraudulent removal.

§ 715. Any tenant or lessee who shall remove his goods from any demised premises, either before or after any rent shall have become due, for the purpose of avoiding the payment of such rent ; and every person who shall knowingly assist such tenant or lessee in such removal, or in concealing any goods so removed, shall forfeit to the landlord of the demised premises, his heirs or assigns, double the value of the goods so removed or concealed.

§ 716. Personal property deposited with a tenant, with the consent of the landlord, or hired by such tenant, or let to him, with the like consent, shall not be distrained for any rent due to such landlord. And property belonging to any other person than the tenant, which shall have accidentally strayed on the demised premises, or which shall be deposited with a tavern-keeper, or with the keeper of any warehouse, in the usual course of his business, or deposited with a mechanic or other person, for the purpose of being repaired or being manufactured, shall not be subject to distress or sale for rent ; but the officer making the distress shall not be liable for seizing or selling property not belonging to the tenant, unless previous notice shall have been given him of the claim of a third person.

§ 717. Distress for rent shall be made by the sheriff of the county, or one of his deputies, or by a constable or marshal of the town or city where the goods are, who shall conduct the proceedings throughout.

§ 718. No distress shall be driven out of the town in which it shall be taken, except to a pound within the same county, not above three miles distant from the place where

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are removed from the premises before distraint ? § 715. What is the penalty for removing and concealing goods ? § 716. In what cases is the property of other persons exempt from distress ? 717. By what officers is distress for rent made ? § 718. How far may property taken by distress be removed ? § 719. With what must a distress warrant be

such distress shall have been taken. All beasts, or goods or chattels taken as a distress at one time, shall be kept, as near as may be, in the same place.

§ 719. An officer may not make distress for rent, unless the warrant of distress be accompanied by an affidavit of the landlord, or his agent, specifying the amount of rent due, and the time for which it accrued.

§ 720. Within ten days after the sale of goods, for rent, or after they shall have been replevied, the officer is required to file the original warrant of distress, with the original affidavit of the landlord, in the office of the town clerk. In the city and county of New York, in the city and county of Albany, in the cities of Troy, Hudson, and Schenectady, such warrant and affidavit shall be filed in the office of the clerk of the county. Any officer violating this provision, shall forfeit fifty dollars to the person whose property shall have been distrained.

§ 721. All distresses for rent shall be reasonable; and whosoever shall take an unreasonable distress, shall be liable to an action on the case, at the suit of the party aggrieved, for the damages sustained thereby.

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## CHAPTER X.

### *Crimes and their Punishment.*

§ 722. THE following definitions of the several crimes are taken principally from the statutes of New York; but they are, without any material exceptions, the same in all the states. Those crimes which are punishable by death, are treason, murder, and arson in the first degree.

§ 723. *Treason* is defined to be levying war against the people of the state; a combination to usurp, by force, the

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accompanied? 720. What is provided in relation to the filing of the warrant of distress and affidavit? § 721. What is the penalty for taking unreasonable distress?

§ 722. What crimes are punishable by death? § 723. What is



government of the state ; or adhering to, and aiding, the enemies of the state, while separately engaged in war with a foreign enemy.

§ 724. *Murder* is the killing of any person in the following cases : (1.) when perpetrated from a premeditated design to effect the death of any human being ; (2.) when perpetrated by any act imminently dangerous to others, and evincing a depraved mind, regardless of human life, although without a premeditated design to effect death ; (3.) when perpetrated without any design to effect death, by a person engaged in the commission of a felony ; and (4.) the wounding of a person in a duel, though it be done out of the state, who shall die in the state ; and every second engaged in such duel shall be guilty of murder. Dueling, however, in some states is either not a capital crime, or is not a statute offence of any degree.

§ 725. *Arson* in the first degree, is wilfully setting fire to, or burning, in the night time, a dwelling house in which there is, at the time, some human being ; and every house, prison, jail, or other building, that shall have been usually occupied by persons lodging therein at night, is deemed a dwelling house of any person so lodging therein.

§ 726. *Manslaughter* in the first degree, consists in killing a human being, without a design to effect death, by the act of another engaged in perpetrating, or attempting to perpetrate, a crime or misdemeanor not amounting to felony ; or in assisting another in committing self-murder. *Manslaughter* in the second degree, is the killing of a human being, without a design to effect death, but in a cruel, unusual manner ; or in unnecessarily killing another, while resisting an attempt by such other person to do an unlawful act, or after the attempt shall have failed.

§ 727. *Manslaughter* in the third degree, is the killing of another in the heat of passion, without a design to effect death, by a dangerous weapon ; or the involuntary killing of a person by the negligence of another engaged in com-

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*treason* against the state ? § 724. Under what circumstances is the killing of a person *murder* ? § 725. What constitutes *arson* in the first degree ? § 726. In what does *manslaughter* in the first degree consist ? In the second degree ? § 727. What is *manslaughter* in the



mitting, or attempting to commit, a trespass ; or in permitting a mischievous animal, by its owner, to go at large, if the animal shall kill a human being, who shall have taken due precaution to avoid the animal ; or the administering, by a physician in a state of intoxication, and without a design to effect death, of any poison, drug, or medicine, which shall produce the death of another ; or in causing death by persons navigating steamboats or other vessels, through culpable negligence or ignorance. Manslaughter in the fourth degree, is the involuntary killing of another by any weapon, or by means neither cruel nor unusual, in the heat of passion.

§ 728. *Homicide* is the taking of a person's life, and includes the crime of murder. Homicide is also excusable, or justifiable. *Excusable homicide* is the killing of a person by accident, or while lawfully employed, without the intention of doing wrong. *Justifiable homicide* is putting one to death in pursuance of a legal sentence ; or in defending one's person, or property, or in defending the person of another. In these cases, no punishment is inflicted.

§ 729. Any person who shall *maim* another, from premeditated design, by cutting out or disabling the tongue, or any other member or limb of any person ; or who shall inveigle or *kidnap* another, or shall be accessory to any kidnapping ; or who shall sell kidnapped blacks ; or who shall decoy or take away children ; or who shall expose children in the street or highway to abandon them ; or who shall commit or attempt an assault with intent to kill, or to commit any other felony, or in resisting the execution of a legal process ; or who shall administer poison whereof death shall not ensue ; or who shall poison any spring, well, or reservoir of water ; such person shall be adjudged guilty of crime.

§ 730. *Arson* in the second degree, is the burning of, and setting fire to, in the night time, any shop, warehouse, or other building, endangering an inhabited dwelling. Arson in the third and fourth degrees consists in burning of build-

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third degree ? In the fourth degree ? 728. What is homicide ? When is it *excusable* and *justifiable* ? § 729. What other injuries done to or attempted upon persons are mentioned as crimes ? § 730. What consti-

ings other than dwellings, and other property of various kinds.

§ 731. *Burglary* in the first degree, is the breaking into and entering a dwelling, in the night time, with intent to commit some felony. The same act, when perpetrated in the day time, or under such circumstances as shall not constitute burglary of the first degree, is burglary in the second or third degree.

§ 732. *Forgery* consists in falsely making, counterfeiting, or altering any instrument of writing, with intent to defraud or wrong any person. *Counterfeiting* is a term used to signify the forging of false coins, or false bank bills, or the fraudulent altering of true ones. This crime consists, not only in the actual making or passing of such false coins or bills, but also in having in possession any engraved plate, or bills unsigned, which are intended to be used for such purposes.

§ 733. *Robbery* is the taking of property from one's person by violence, or threats of violence, and by putting the person in fear of his life, or grievous injury.

§ 734. *Larceny* is the term used to signify *theft* of all sorts. If the amount of property taken exceed twenty-five dollars, the crime is called *grand larceny*; if the amount be twenty-five dollars or under, it is adjudged to be *petit larceny*. The former is punishable by imprisonment in a state prison for a term of years; the latter, by fine, or imprisonment in a county jail, or both; and if it be a second offence of the same person, it is punishable in the same manner as grand larceny.

§ 735. *Embezzling* is the converting, by any person, to his own use, of property intrusted to him by another, and is punishable in the same manner as stealing property of like value.

§ 736. *Perjury* is wilfully swearing or affirming falsely to any material matter, upon any oath, legally administered. *Subornation of perjury* is the procuring of another to swear

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tutes *arson* in the second degree? Third and fourth degrees? § 731. What constitutes *burglary* in the several degrees? § 732. In what does *forgery* consist? What is *counterfeiting*? § 733. What is *robbery*? § 734. What is *larceny*? What constitutes *grand*, and what *petit larceny*? How are they punishable? § 735. What is *embezzling*?

falsely, and is punishable in the same manner, and to the same extent, as perjury.

§ 737. *Bribery* is offering to any person in the administration of justice, any reward to influence his vote, opinion, or judgment on any question; and is punishable by imprisonment in a state prison, or fine, or by both. Any person accepting such bribe, shall be punished in like manner, and shall forfeit his office, and be forever disqualified from holding any public trust or appointment.

§ 738. *Dueling* is the fighting with a deadly weapon, in single combat with another. Any person killing another in a duel, is subject to the punishment of death. If death does not ensue, the offence is punishable by imprisonment in a state prison. Challenging, or accepting a challenge to fight, or to be present as a second, is punishable also by imprisonment in a state prison.

§ 739. *Offences punishable by Imprisonment in a County Jail and by Fines.*—Among these are the following: Petit larceny; attempting to extort, by threats, any property or pecuniary benefit; fraudulent conveying or concealing property to defraud creditors; conspiracies by two or more persons with intent to commit an offence; imprisoning or arresting another without legal authority, or under a false pretence; receiving a reward to conceal a misdemeanor; voting more than once at an election; maliciously killing or wounding animals that belong to another, or cruelly beating animals, whether his own or those of another; wilfully opening or reading sealed letters addressed to another, except in cases punishable by the laws of the United States; removing or defacing any monument, milestone, or guide board. These, besides many other offences not here enumerated, are punishable by fine or imprisonment in the county jail, or by both. And any person having been convicted of petit larceny, or an attempt to commit an offence, which, if perpetrated, would be punishable by imprisonment in a state prison, shall, for a second offence, be imprisoned in such prison.

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§ 736. What is *perjury*? What is *subornation of perjury*? § 737. Define *bribery*. What is the penalty? § 738. What is *dueling*? How punishable? § 739 What offences are punishable by imprison-

§ 740. Those offences defined in this chapter whose punishment has not been stated, are punishable by imprisonment in the state prison for a term of years, varying in length according to the aggravation of the crime: excepting the offences enumerated in section 729; some of which may be punished by imprisonment either in the state or county prison, or by fine.

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ment in the county jail and by fines? § 740. What punishment is annexed to the crimes herein defined, whose penalties have not been mentioned?

## PART FOURTH.

### POLITICAL ECONOMY.

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#### CHAPTER I.

##### *Definition of the Term.—Utility of the Science.*

§ 741. POLITICAL ECONOMY is the science which treats of the nature and causes of wealth. The word *economy* is from two Greek words signifying *house* and *law*; and means the law of the house, or household. Hence, the economy of a person means the regulation and government of his family, or the concerns of his household. In this sense of the term, a man's economy may be said to be either good or bad. But it is commonly used in a more restricted sense, signifying *frugality*, or a *prudent* management of household affairs.

§ 742. In speaking of the regulation of the affairs of a state or nation, we use the term public economy, or more frequently *political economy*. As economy has in view the acquisition of wealth, or property, the term political economy is used to designate the science which teaches the manner in which the prosperity of the members of a body politic is promoted; or how the public wealth is produced, distributed, and consumed.

§ 743. The utility of a knowledge of this science has not hitherto been duly appreciated. Nothing needs to be said to convince any one of the importance of domestic or private economy. All mankind, moved by self-interest, are ever seeking ways and means of increasing their wealth. Hence we see men assiduously pursuing their own private interests,

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EXERCISES.—§ 741. What is *political economy*? Give the origin and meaning of the word *economy*. § 742. Why is the word political here prefixed to economy? § 743. What degree of attention has this

apparently insensible of the connexion of their own prosperity with that of the community, or of its being in any degree attributable to the policy of the government under which they live. They do not seem to be aware that to promote the public welfare is the grand object of civil government.

§ 744. There are those, however, who admit the utility of the science of political economy to persons charged with the administration of public affairs, who do not regard it as a very essential branch of a common education. In a monarchy, where the great body of the people have no agency or influence in the administration, a knowledge of this science is doubtless of less importance to them, than in a free government, where all men, whose interests are affected by the operation of the laws, possess, primarily, equal power in the government. Young men, who are now pursuing their studies in schools, will in a few years be elevated to high public stations; and in a country where the road to public office is open to all classes, an intimate acquaintance with the principles of political economy, must be of the highest importance.

§ 745. In a free government, the people have in their own hands the right of correcting the evils which result from unwise laws. But if they do not understand the cause of their distress, or if they do not agree in tracing the public suffering to its true cause, relief cannot be administered. Moreover, without a knowledge of political economy, a people might ignorantly oppose measures best adapted to promote the public prosperity.

§ 746. The inattention to this science which has so long prevailed, may be attributed, in part, to the common opinion, that its principles are too abstruse to be brought within the comprehension of the great mass of the people, especially of the young. The fact, however, is otherwise. Few sciences are more simple. The youth of fifteen, though he may not be an adept in the science, nor possess the knowledge of an experienced legislator, is nevertheless capable of

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science received? § 744, 745. Why is a knowledge of political economy more useful in a free, than in an arbitrary government? What would ultimately be the consequence of general ignorance among the people of this country? § 746. What is one of the probable causes of

understanding the general laws and principles which regulate the production and distribution of the wealth of society. These principles, when duly explained, are as readily comprehended as those of mathematics, or of chemistry and natural philosophy.

§ 747. Writers on political economy have treated of the subject under these four general heads : production of wealth, exchange of wealth, distribution of wealth, and consumption of wealth. This order will be observed in the following treatise as nearly as the nature of the several subjects discussed will admit. Under the first head it will be shown how the industry of a nation may be rendered most productive of wealth ; under the second, will appear the necessity of an exchange of the products of labor, and the principles by which this exchange is conducted ; under the third it will be seen how the profits of industry are distributed among the various classes of producers ; and under the fourth, how property is consumed ; in other words, how the value of objects created in production is destroyed.

## CHAPTER II.

### *Production.—Definition of Terms.*

§ 748. WEALTH comprehends those objects which are capable of gratifying the desires of man, and of being exchanged for other things which are necessary to satisfy his wants. These objects are numerous, consisting of land, buildings, grain, metal, cloth, fuel, money, household goods, domestic animals, and all commodities which are essential to the life and comfort of man, and for which other articles of value may be procured in exchange.

inattention to this science ? § 747. How is this subject usually divided ? and what does each of these divisions treat of ?

§ 748. What is the definition of *wealth* ? · § 749. What is *value* ?

§ 749. *Value* is defined to be that quality in objects which renders them useful to man. A man's wealth is said to be in proportion to the amount of the value of the things which he possesses. But there are things of the highest degree of utility to man, which, however, constitute no portion of his wealth. Such are air, daylight, and water. These have great *intrinsic value*, or value in use, being indispensable to the existence of mankind; but, being possessed alike by all, no man can procure for them anything in exchange. It is therefore the value in exchange, or *exchangeable value* of a thing which makes it an item of wealth. Hence it is said, that to create value is to create wealth.

§ 750. As any object is considered valuable on account of its useful properties, a writer on economy (Say) gives to this fitness or capability of a thing to satisfy the wants of mankind, the name of *utility*. And he says, that to create objects which have any kind of utility, is to create wealth, for the utility of things is the ground work of their value, and their value constitutes wealth; and, hence, to create *utility* is to produce wealth. This latter definition, however, does not essentially differ from that given in the preceding section. According to either, wealth consists in the *value* of things.

§ 751. The questions then naturally arise, whence is wealth derived? and how is value created? The opinion formerly prevailed among economists, that the soil was the source of all wealth. But the more rational doctrine now prevails, which regards LABOR as the agent which produces wealth. The materials of wealth may be said to originate from the bosom of the earth; but it is by the aid of labor that they are made to constitute wealth. And in proportion to the amount of labor bestowed upon any material, is its value augmented, and the wealth of an individual increased.

§ 752. Iron is an article of comparatively small exchangeable value. What value it possesses has been created almost wholly by the labor of changing its form from its rude state in the earth. By the labor of converting it into axes,

What is meant by the terms, *intrinsic value* and *exchangeable value*?

§ 750. How is wealth produced? In what does it consist? § 751.

What is the grand agent which produces wealth? § 752. Show, by



its value is farther increased, perhaps ten fold. If manufactured into knives, the value may have been increased to an amount more than one hundred times greater than it possessed in the state in which the cutler received it. A pound of silver is worth more than a pound of iron, because more labor is required to get silver than to get iron. So also the value of land is augmented by the labor of clearing it of the forest, and preparing it for cultivation.

§ 753. The exchangeable value or price of a thing, therefore, is generally as the toil and labor of acquiring it. It is not the less bought with labor when paid for in money or other goods; for labor was the first price of the money or goods with which the article was procured. Whether a man labor a day to procure a bushel of wheat, or pay for it a dollar in money for which he had previously given a day's labor, the cost of the wheat is to him the same in either case. And if one man acquire any thing for one, two or ten day's labor, he will exchange it for another thing which he wants that has cost the same quantity of labor.

§ 754. The exchangeable value of an object is, however, liable to sudden and temporary variations; that is, the *current price* of a commodity may, by extraordinary circumstances, be made to vary from the *cost* or *natural price*. Should double the usual quantity of wheat be sent to any market for the use of the inhabitants, the supply being greater than the want or demand, the owners might be obliged to sell the article below the cost, or suffer a still greater loss by not selling it at all. If, on the other hand, a scarcity should by some means be produced in the market, the current price, or exchangeable value, of a commodity would be raised above the cost, because the demand would be greater than the supply. But the causes of these fluctuations are usually of short continuance, as the exchangeable value of things ever tends to a proper level.

§ 755. A *product* is that which is formed or brought forth

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an example, how labor increases the value of things. § 753. By what is the value of a thing generally determined? § 754. Is this rule invariable? What is the difference between the *current* and the *natural* prices of things? How is this variation caused? § 755. What is a product?

by nature, or by human labor ; and the act or process of making or furnishing such object, is called production : consequently, the creation of any valuable product, or the investing of any matter or substance with utility, is properly termed the *production of wealth*.

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### CHAPTER III.

#### *The Different Kinds of Industry, and their Concurrence in Production.*

§ 756. As the grand agent in the production of wealth is labor or industry, and as wealth is increased in proportion to the increase of value produced by industry ; it is the province of political economy to show how industry may be most successfully employed in the creation of value. Without industry, few of the wants of mankind would be supplied. The earth in a state of nature would not only furnish to man a scanty subsistence, but it could furnish such subsistence to a very limited population.

§ 757. There are three kinds of industry by which value is created : agricultural, manufacturing, and commercial industry ; and the concurrence of these is necessary in production. Industry, in the production of wealth, does not, however, create matter ; it merely changes the form of it. It may properly be said to be the human employment of natural agents in creating value, by changing the form and place of existing substances.

§ 758. "The husbandman," says Say, "who sows a grain of wheat that yields twenty fold, does not gain this product from nothing : he avails himself of a powerful agent ; that is to say, of Nature, and merely directs an operation, whereby different substances previously scattered throughout the

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§ 756. By what are the wants of mankind principally supplied ?

§ 757. What three kinds of industry concur in producing wealth ? Does industry create matter ? § 758. Explain the process of chang-

elements of earth, air, and water, are converted into the form of grains of wheat."

§ 759. The manufacturer changes the form of timber, iron, and wool, into chairs and tables, scythes and axes, and various articles of clothing. Thus, in both these branches of industry, value is created by changing the *form* of matter. Nearly the whole value of a product sometimes consists of the *addition* of value given to matter by industry. Thus, the value of the material of which a yard of lace is made, is too small to be computed, nearly the whole value of the product consisting in the labor of making it. A still greater addition of value is given to a lump of iron ore wrought into the hair springs of watches. It is estimated that a pound of iron will furnish the material for 80,000 springs; which, at  $12\frac{1}{2}$  cents a piece, would amount to \$10,000.

§ 760. Commercial industry likewise concurs in production, by increasing the value of a product by transporting it from one place to another. A ton of iron is more valuable in New York than in the foreign port whence it was imported; and a quintal of codfish possesses greater value in Buffalo than in Albany, the value having been increased by transportation. Here value is created by changing the *place* of an object.

§ 761. Thus it may be seen how these several kinds of industry concur in production. And it is not the product of either one of them, but the united products of agriculture, manufactures, and commerce, that compose the annual produce of a nation. We see too the mutual dependence of these different classes of producers upon each other, and the error of those who consider one of them more honorable or more useful than the other. And it is equally evident that if any one of them either prospers or suffers, the others must of necessity prosper and suffer with it.

§ 762. Though these three kinds of industry contribute to the wealth of society in so many different ways, there

ing the form of grain? § 759. Illustrate, by examples, the increase of value of a substance, in changing its form by labor bestowed upon it. § 760. How does commercial industry concur in production? § 761. What are the nature and effect of the concurrence of these several branches of industry in production? § 762. What three dis-

are three distinct operations which are the same in each and all of these several branches of industry. That is to say, industry, whether agricultural, manufacturing, or commercial, may be divided into (1.) theory; (2.) application; and (3.) execution. All of these three operations are necessary to the formation of any product, as we shall presently see.

§ 763. In the production of a watch, for example, the first step is the study of the nature and properties of iron; by which investigation it has been discovered that this metal can be drawn out to almost any degree of attenuation, and that it is capable of receiving a great degree of elasticity. The second step is the applying of the laws and properties of iron to the purpose of moving a watch by means of main and hair springs. The last operation is the execution of the manual labor necessary to complete the product.

§ 764. The same operations may be traced in agricultural and commercial industry. The natural philosopher or man of science has in the first place discovered the order and conduct of nature in the production of grain, the chemical qualities of the various substances by which the soil may be fertilized. The farmer, having acquired a knowledge of these discoveries, proceeds to apply this knowledge to the purpose of creating a useful product, and directs the mode of manuring the soil and the time and manner of preparing the soil in order to effect the production of the desired object. In the last place, the laborer ploughs the ground, and sows the seed.

§ 765. These operations are not always, however, performed by different persons; sometimes the same person performs two; but it seldom happens that he performs all of them. Franklin discovered the laws of electricity, and applied them to the construction of the lightning rod; thus performing the labor of discoverer and of inventor; but he probably never made a rod with his own hands. In most of

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distinct operations are performed in the formation of a product? § 763. Illustrate this in the case of a mechanical product. § 764. In the case of an agricultural production. § 765. Are these several operations always performed by different persons? Why is not the first of

the products of the present day, no person performs more than two of these operations ; because new discoveries are seldom made. Most of the new inventions which are taking place, are the result of the knowledge of the laws of nature long since discovered. The nature of iron and of heat, and the effect of the latter upon the former, were discovered at an early period ; but the application of the knowledge of this effect to the construction of cast iron ploughs, is of recent invention. And almost all the labor done is exerted in the creation of products which are the result of old discoveries and inventions.

§ 766. We see, then, that in each branch of industry there are three classes of laborers. First, discoverers, including philosophers and men of science, who investigate and discover the laws of nature ; secondly, inventors of machinery, and all who teach us how to apply the knowledge of these laws to some practical purpose ; among whom may be classed also the lawyer, physician, and clergyman, by whose knowledge society is in various ways made more prosperous and happy ; and thirdly, all persons who labor in the several trades and manual employments.

§ 767. The labor of lawyers, physicians, and clergymen, is by some called *unproductive labor* ; because it imparts no value to any substance ; that is, it invests no matter with any utility or exchangeable value. The physician visits a patient, and prescribes a remedy for his disease, but no product is created which the sick person can transfer or dispose of to another, or keep for future use. Of a similar nature is the labor of a lawyer and a clergyman.

§ 768. But laborers in these professions are no less productive laborers than farmers and mechanics. Laws are enacted to secure to persons their rights. But to avail himself of the benefit of the law, a man must have a knowledge of the law. And if he must at any time have recourse to the law to obtain justice, he may procure the advice and assistance of the lawyer, who has the necessary knowledge

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these operations so common as the others ? § 766. Who compose each of the three classes of laborers in the several branches of industry ? § 767. Why is the labor of lawyers, physicians, and clergymen called *unproductive labor* ? § 768. Is not the labor of these men

of the laws. Lawyers, therefore, are of essential benefit to the community. If there were no persons of this profession, every man must spend much time in the study of the laws, in order to know how to maintain his rights. But it is much cheaper to hire the service of a lawyer when it is wanted, who, with his knowledge of the law, may serve a whole neighborhood.

§ 769. The physician also is a productive laborer. By his knowledge of the laws of health, he may cure the sick, and enable them to work; so that there is more labor performed than there would be if there were no physicians. Hence they must be ranked among the productive classes of the community.

§ 770. But how, it may be asked, do clergymen contribute to the production of wealth? Without Christian teachers, men would doubtless be less virtuous and industrious than they now are; and, consequently, less labor would be performed. As vice should increase, the laws would be oftener broken, and the rights of men would be more insecure. The prevalence of religious principles affords a more effectual security to the rights of person and property, than the wisest laws; for where there is no virtue in a society, the laws will command but little respect.

§ 771. We must conclude, then, that professional men are productive laborers. But as they increase the productiveness of a community, not directly by the creation of any material product, but in an indirect manner, they are called *indirect productive* laborers; and as the products of their labor are incapable of becoming objects of barter or exchange, they may be called *immaterial products*.

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productive? Show how a lawyer's labor is productive? § 769. How that of a physician? § 770. Of what service is the labor of a clergyman in production? § 771. What are these labors and their products properly called? Why?

## CHAPTER IV.

*Capital.—Its necessity in Production.*

§ 772. It has been shown that industry or labor is essential to the production of wealth, and how the several kinds of industry concur in production. But it must be at once perceived, that industry alone can produce nothing valuable. There must be some *materials* with which, and upon which men may operate. The farmer can do nothing without land, manure, seed, and animals; the manufacturer must have leather, iron, wool, and cotton; and the merchant must have wares and merchandise to transport and sell.

§ 773. These several classes of producers need tools and implements also, to perform the labor of their several occupations. The farmer must have ploughs, carts, spades, and other utensils; the mechanic and manufacturer want saws, planes, hammers, and machines for spinning and weaving; and transporters need vessels and land vehicles to convey their goods from place to place. And all laborers must also be provided with food and clothing, and other things necessary for their subsistence and comfort.

§ 774. All these items, together with the money used to carry on the several occupations, constitute what is called *capital*. Neither the farmer, manufacturer, or merchant, has a large portion of his capital or wealth in money; but its use is very convenient, and even necessary, in all kinds of business, in order to facilitate the exchange of products. The utility and general objects of money will be considered hereafter. Capital, in these several forms, employed in such manner as to become more valuable, or to produce a profit or income, in consequence of the changes and transformations which it undergoes, is called *productive capital*.

§ 775. Productive capital, though constantly undergoing changes, in the progress of production, remains in effect the

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§ 772, 773. Mention some of those things which must be united with industry or labor in production? § 774. What are these several items called? Is money any part of a man's capital? What is *pro-*

same ; for, though the value of capital be consumed in its employment and use, it reproduces itself ; and if prudently managed, the more frequent the changes of capital, the greater, in general, will be its productiveness. A part of the capital of a farmer yearly expended or consumed, consists of the seeds for his ground, provisions, fodder for his cattle, and the wages of his laborers. But this capital is not lost ; for its value reappears, and perhaps with increase, in the successive yearly products of his farm. A similar result follows from the use and change of capital employed in manufactures and commerce.

§ 776. But all capital is not employed in the business of production. In every country there is a greater or less amount of capital which lies entirely inactive, or is unprofitably expended. Such are uncultivated and barren lands, machinery not in operation, and money hoarded up. These, while in this state, yield no income to the owner ; and the nation loses the profit of the industry which it might have kept in motion. Hence, this is called *unproductive capital*.

§ 777. That portion of capital which is changed in the business of reproduction, is called *circulating capital*. Such are the grain and manures of the farmer, and the wages of his laborers ; the materials from which goods are manufactured ; and the stock of goods of a merchant. They are constantly disappearing, and returning in a different shape. A small part of the capital of a farmer is circulating capital ; that of a manufacturer is much greater ; while the capital of a merchant is almost wholly a circulating capital.

§ 778. Another kind of capital is that which consists of the lands, buildings, working animals, and the various utensils of the farmer ; the machinery of the manufacturer, and the building with which it is connected ; and the warehouse of the merchant. These do not undergo the same changes and transformations as the items of circulating capital, but are kept for permanent use ; and the most perishable of them last for many years. Hence this kind of capital is denominated *fixed capital*.

*ductive capital* ? § 775. Describe the nature of productive capital, and its operation in reproduction. § 776. Of what does *unproductive capital* consist ? § 777. What is *circulating capital* ? Name some of



§ 779. Wherever, and in whatever branches of industry circulating capital is actively and profitably employed, we see an increase of fixed capital. A thriving farmer usually appropriates a part of his income to the improvement of his farm; buildings, and other items of fixed capital, or to the purchase of more land. The manufacturer, also, expends a portion of the increase of his circulating capital in the enlargement of his manufactory, and in making additions to his machinery. The merchant, too, improves or enlarges his warehouse and dwelling, or erects new and more commodious ones. This change of circulating into fixed capital may be considered one of the surest indications of a prosperous community.

## CHAPTER V.

### *The use of Natural Agents in Production.*

§ 780. THE power of man alone applied to capital, could scarcely furnish him with the most meagre subsistence. A man with nothing but a spade and a hoe to cultivate his land, would receive but a scanty remuneration for his labor. But if he had ten times as much strength as he now has, his labor would be ten times as productive; for the greater the power brought to the assistance of man, the greater will be the amount produced by human labor.

§ 781. The productiveness of human industry is owing principally, to the assistance which it receives from natural agents. These agents are of two kinds, animate and inanimate. *Animate natural agents* are beasts of burden, as the horse, ox, ass, mule, &c. By the aid of these, mankind are enabled vastly to increase the productiveness of labor.

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the items. § 778. What is *fixed* capital? Mention some of the items of fixed capital. § 779. What effect has the profitable employment of circulating, upon fixed capital?

§ 780. To what is the productiveness of human labor proportioned?

§ 781. By what means is the necessary power furnished to man to

We may imagine, with tolerable accuracy, how slow would be the progress of improvement in a new country, if its inhabitants could not avail themselves of the assistance of working animals in clearing the soil, and preparing it for tillage ; and how much smaller would be the quantity of land cultivated, and, consequently, how much less productive human labor would be, without this assistance. And let us imagine, too, how much less grain a man would carry at a single draught to mill or to market, if he were obliged to bear it on his shoulders, and we may appreciate the aid derived by human industry from these agents.

§ 782. *Inanimate natural* agents are water, wind, steam, fire, gunpowder, and such other powers as assist the productive labor of man. The utility of these agents also is apparent. The advantages which man derives from natural agents are in proportion to the amount of personal labor and capital which it enables him to dispense with.

§ 783. *Water* is a powerful agent in production. The aid which human industry derives from the power of falling water, will appear from contrasting the effects of this agent in propelling carding machines, spinning jennies, and power looms, with the old mode of manufacturing cloth, by which each of these operations was performed by hand labor. A similar advantage has been derived from its application to the use of grinding grain. In ancient times, this necessary business was performed by pounding grain with the hand, and was done by women. (See Mat. 24 : 41.) Water or wind mills like those of the present day were not in use. One miller with the assistance of the power of water upon machinery, now grinds as much, probably, as was in those days ground by twenty persons.

§ 784. *Wind* also is a very valuable, as well as powerful agent, brought into the service of human industry. How great a number of men would it require to propel a large vessel on the ocean, by means of oars ! It is probable that a long voyage would never have been performed ; perhaps

render labor productive ? Illustrate the benefits of animate natural agents ? § 782. What are some of the inanimate natural agents ? § 783. Illustrate the utility of *water* as an agent in production. § 784. For what purposes is *wind* useful ? For which of these pur

it would never have been even undertaken. But by the help of wind, ships of the heaviest burthen may be carried around the globe. Wind is used also to a limited extent in driving mills and sundry kinds of machinery. As a stationary agent, however, it is less valuable than water, and is used for such purposes only as a substitute for water, where the latter is wanting.

§ 785. *Gunpowder* is used for various purposes. The most important assistance which it affords to industry, is in blasting rocks. By means of this agent wells may be dug through solid rocks. But it performs a greater service where canals are to be excavated through rocks. Projects for canals and rail-roads would often be of necessity abandoned, or constructed at an immense cost, if the aid of this article could not be obtained in their construction.

§ 786. *Steam* is a highly useful agent, and is used for a greater variety of purposes than either of the preceding. The most important uses for which it is employed, are, the propelling of vessels on the ocean and on rivers, and vehicles for the transportation of travellers and goods on rail-roads; the moving of various kinds of machinery, &c.

§ 787. *Fire* is an indispensable natural agent. Its uses are so numerous and so familiarly known, as to render a particular enumeration of them unnecessary. In fact, without it, steam could not be created, gunpowder would be useless, metals could not be dissolved or softened, and, consequently, scarcely a useful instrument of labor, or valuable product could be created.

§ 788. Hence we see the advantages resulting from a union of the natural agents with capital. Machinery and tools, which constitute an important item of capital, bring into the service of man numerous and very powerful natural agents, of whose assistance he could not otherwise avail himself. By this assistance, the productive power of mankind is multiplied in a remarkable degree; insomuch that

poses is it most useful? § 785. What are the uses to which *gunpowder* is applied? Has the world been benefited by its use as an instrument of war? § 786. To what useful purposes is *steam* applied? § 787. Mention some of the uses of *fire*, as an agent in production. § 788. By what means are the natural agents brought into the ser

one man, with the aid afforded by capital and the natural agents, can perform as much labor as many men can perform without such aid.

§ 789. This great increase of the productiveness of human industry, has led many persons to make objections to the introduction of machinery. They suppose that when a new machine takes the place of human labor, a great portion of the industrious laborers are thrown out of employ; and, as the use of labor-saving machinery lessens the demand and price of human labor, it has a tendency to depress the laboring classes of the community. But these objections will be found upon a slight examination to be without foundation.

§ 790. The introduction of a new machine may cause a temporary derangement of human labor; but this evil is more than counterbalanced by the advantages of employing machine labor. It requires no little time, after machines have been invented, to construct them, and bring them into general use; so that laborers will have time to find employment in some other place, or some other department of industry. Many of them will be wanted to labor in the construction of the machines by which they expected to be deprived of employ: or rather, their labor will be merely transferred from one department of industry to another.

§ 791. But let us see what direct benefits result from the employment of machinery. First, these laborers, in common with all other consumers, now obtain the products manufactured by machine labor at a much reduced price; for it must be remembered that as the labor of creating a product is diminished, the price of it falls. Secondly, the reduction of the price increases the consumption of a commodity. More people will be enabled to purchase it; and it will also be used for new purposes; so that the increased demand will give employment to as great a number of laborers as were occupied in its production before.

§ 792. Before the invention of the art of printing, literary

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vice of man? § 789. What effect do some suppose labor-saving machinery has upon the laboring classes? § 790. By what is this effect limited? § 791. What are some of the direct benefits which result from the employment of machinery? § 792. How were books

works could be had only by transcribing them from the original copy. By the introduction of the printing press, large numbers of copyists must have been thrown out of employment. But note the result. The greater ease of reading printed than written books, and the low price for which they could be afforded, immediately increased the demand for them. As improvements in printing have been going on, there have been a corresponding reduction of price and increase of demand for literary works. The consequence of this is, that the number of persons now employed as printers; manufacturers of presses, type-founders, paper-makers, bookbinders, booksellers, &c., is probably much greater than the number which would be occupied in the manufacture of books if the art of printing had not been invented.

§ 793. Similar results have been produced by the improvements which have been made in the manufacture of cotton, woollen, and other goods. Not only have the poorer classes of consumers been enabled to procure the necessaries of life at lower prices, but the demand for their labor has been increased. This is owing, doubtless, to the facts before stated: the reduction of price has brought them within the reach of a much greater number of consumers, and has caused them to be used for purposes to which they would not otherwise have been applied.

§ 794. Witness, for instance, the cast iron business. A half century ago, this article was used for comparatively few of the most beneficial purposes to which it is at present applied. On every application of it to a new use, laborers in some department of industry must have been affected in some degree. The invention of the cast iron plough must have interfered with the business of the common blacksmith, by destroying the demand for wrought iron shares. The extensive use of stoves has lessened the demand for the labor of the mason in building chimneys. Thus a few mechanics have been obliged to change, in some measure,

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obtained before the invention of printing? Illustrate, by the effects of this invention, the benefits of labor-saving machinery? § 793. What benefits have been realized from similar improvements in manufacturing cloth? § 794. State the benefits to mankind of the appli-

their employment ; but who will say that even these, in common with all laborers, have not been greatly benefited by these inventions ? Aside from the gain to the farmer from the improved plough, and the saving to the poor, by the use of stoves, in the expense of fuel, and the conveniences in cookery ; the increased demand for cast wares furnishes employment to a great number of laborers in the manufacture, transportation, and sale of these commodities, and in the erection of the buildings and machinery necessary for carrying on these several occupations.

§ 795. But if the use of machinery, by increasing the productiveness of human labor, be injurious to the community, the same objection will lie against all improvements which have similar effects ; and this would bring us back to the uncivilized or savage state, in which we should be under the necessity of satisfying our hunger by hunting, and of clothing our bodies with the skins of the beasts of the forest.

## CHAPTER VI.

### *Division of Labor.*

§ 796. WE have seen how the different kinds of industry contribute to the production of wealth ; and how industry is assisted in this production, by the employment of capital and the natural agents. It will next be in order to consider the advantages of a division of labor. By *division of labor* is meant the separation of the different trades and occupations from each other, and the employment of each individual exclusively in one kind of business, or in the performing of a single operation.

§ 797. Without a division of labor, we can hardly con-

cation of cast iron to some of its most useful purposes. § 795. What would be the effect upon the industry of a country, of giving up the use of machinery ?

§ 796. What do you understand by *division of labor* ? § 797. What

ceive the existence of civilized society. It is this arrangement, which, perhaps, more than any thing else, causes the difference between civilized and savage nations. In the latter, each individual supplies himself with all the necessities he enjoys; whereas, in every civilized community, it is common for each person to labor at a single employment. In general, the farmer is nothing but a farmer; the manufacturer nothing but a manufacturer; and the merchant nothing but a merchant. And it is each one's confining his labor to one branch of industry, that renders it in the highest degree productive.

§ 798. Suppose a farmer, besides cultivating his land, should undertake to build his houses and barns, make his own ploughs, carts, hoes, spades, and other farming utensils; shoes and hats for himself and his family; also his chairs, tables, and other household wares. It will readily be supposed that he must labor to a very great disadvantage; and that he will be poorly furnished with the necessities of life. He must have as many sets of tools as there are different kinds of articles to be made. These would cost a large sum. And then he must use them many years before he could manufacture an article with facility and despatch. Probably he would never be able to perform half as much labor in a given period of time as he who pursues a single occupation.

§ 799. Hence the labor of a farmer is most productive when he applies himself wholly to the cultivation of his farm; because what he produces over and above what he wants for his own consumption, will buy more of the other necessities than he could make in the same time with his own hands. The division of labor, is not, however, carried to the same extent in agricultural as in other kinds of industry; the farmer often finds seasons of leisure in which he may profitably employ himself in doing things which appropriately belong to other trades. Still the general principle holds good, that each branch of industry is more profitable when carried on separately, than when it is united

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is the effect of a division of labor upon society? Upon industry?

§ 798. Illustrate the consequences of a union of the several occupations. § 799. Show how the labor of a farmer becomes most product-

with others in the same hands, because a greater amount of value is created.

§ 800. By this division of labor, the actual wants of every member of the community are better supplied than they would be if each should attempt directly to produce or manufacture all the necessaries of life. Every person, engaged in any occupation, wants a portion of the products of other trades or employments. All are equally dependent on each other. Hence it is for their mutual interest to supply each other with those things which they do not produce for themselves. The wants of all may thus be more *promptly* as well as more cheaply supplied. If the farmer should break his plough or his scythe, he may very soon procure a new instrument from the manufacturer or the merchant; whereas, if his proper business should be suspended until he could supply the place of the broken instrument with his own hands, he must suffer a material loss.

§ 801. Not only is labor rendered more productive by a separation of the different trades, but its productiveness may be still farther increased, by proper economy in the application of labor. For instance, a chair maker does not finish each chair before he begins another. He usually commences by "getting out the stuff," as it is called, for a large number, and preparing it all for the lathe; the pieces are then all turned; next they are all framed together; and lastly the chairs are all painted.

§ 802. But where a number of men labor in the same manufactory, it would be still better economy to assign to each a distinct operation: to one, the preparing of the timber; to another, the turning; to a third, the framing, and so on to the finishing operation. Not only can a greater amount of labor be performed in this manner; but there is also a great saving of capital by this arrangement. If each laborer were to perform all the several operations, each

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ive when limited to the business of cultivation. § 800. Are the wants of all persons better supplied by each one's working at one kind of business? Give an example. § 801. By what economy of labor may the productiveness of industry be farther increased? Give an instance. § 802. By what subdivision of labor might a still greater amount of products be created? What effect has this arrangement



must have a complete set of tools and machinery. In some kinds of manufacture, these would require a great outlay. But by the division of labor above described, one set of tools would be sufficient for the whole.

§ 803. To illustrate the benefits of a division of labor, Dr. Smith, in his *Wealth of Nations*, cites for an example the manufacture of pins. One man draws out the wire; another straightens it; a third cuts it; a fourth points it; a fifth grinds it at the top for receiving the head; to make the head requires two or three distinct operations; to put it on is a peculiar business; to whiten the pins is another; and it is a trade by itself to put them into the paper: the whole labor, he says, consists of about eighteen distinct operations. He states, that in a small manufactory, where ten men only were employed, and where, consequently, some of them performed two or more distinct operations, twelve pounds, or about 48,000 pins were made in a day; the labor of each being equal to the making of 4,800 pins. But if all had wrought separately and independently, and without experience, each would probably have made no more than 20 pins in a day.

§ 804. The great increase in the quantity of work which may be effected by a division of labor, is evidently owing, in part, to the increase of dexterity in every particular workman. A person working constantly at the same employment, or upon a single operation, for a number of years, will become more and more skilful. A common blacksmith, who manufactures the various articles in his line of business, cannot make half as many nails in a day as a lad of sixteen years of age, who has labored but a year exclusively at the manufacturing of this article.

§ 805. Another advantage of a division of labor, consists in the saving of time usually lost in passing from one sort of work to another, and in acquiring a handy use of tools to which a workman has not been accustomed. A man pursuing the several occupations of farmer, blacksmith,

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upon capital? § 803. Can you illustrate the advantages of the division of labor by the pin manufacture? § 804. Why can a person laboring at one employment, or upon one operation, produce more than when his labor is not thus confined? § 805. What disadvanta-

and cabinet-maker, must needs lose time in going from shop to shop, and from his shops to his fields. And in the transition from one to the other, there is more or less loitering, as the attention is not readily fixed upon a new object.

§ 806. Again, the invention of labor-saving machines, and the improvements which are from time to time made in them, owe their origin, in most instances, to the division of labor. When the attention of a man is kept steadily upon a single object, he will be much more likely to discover some easier mode of attaining it, than when his attention is divided among a number of objects. Persons most skilful in any business, are commonly those who, after a long and steady application to that particular business, have contrived some improvement in the manner of performing it.

§ 807. There is yet another and an important advantage realized from a division of labor. In some kinds of business, many things may be done by persons of little experience, and by women and children, whose labor costs much less than that of experienced adult males. In the manufacture of books, for example, it would not be good economy to employ men exclusively whose labor would cost from one dollar to two dollars a day, when boys may be employed to set and distribute, and to ink the types, and to dry the printed sheets; and females to fold the sheets, and sew them into books; who will perform an equal quantity of labor in these operations, for fifty cents a day. The same economy is practised in the manufacture of cotton and woollen cloths, paper, &c., and to some extent even in agricultural and commercial business.

§ 808. But the division of labor is often limited by unavoidable circumstances. When the demand for any product is small, the highest degree of productiveness cannot be attained by a division of labor. For example; labor in the manufacture of pins is most productive when each of the

ges attend the passing from one kind of business to another? § 806. Are inventions, to any great extent, to be ascribed to the division of labor? How do you account for this? § 807. What other advantage is realized from a division of labor? Give two or three examples of the economy of employing women and children. § 808. Is there any limit to the division of labor? Show the effect of a limited de-

eighteen distinct operations is performed by one person. But if the 48,000 pins daily made were more than sufficient to supply the consumers of this article, either the laborers must be idle a part of the time, or a smaller number must be employed in the business. But in the latter case, several operations must be performed by one person; consequently the productiveness of each man's labor would be diminished.

§ 809. In a populous city, one merchant deals exclusively in dry goods, another in hardware, and another in shoes, and not unfrequently in one or two commodities only. But in a country village, the amount sold of any one kind of goods would not furnish employ for an establishment. Hence, in such places, every merchant finds it necessary to trade in all kinds of wares and commodities which are wanted by the inhabitants around him.

§ 810. Again, the division of labor is limited by capital. A manufacturer of small capital cannot give employment to as many laborers as one who possesses a large capital; because the greater the number of workmen employed, the greater must be the supply of raw materials to be manufactured, and the greater also must be the daily expenditures in the wages of laborers. And the division of labor will be still more restricted, if the business be of that kind, the products of which do not bring quick returns. For it is evident, that one who disposes of the products of his labor as soon as they are created, or on short credit, requires less capital than one who could not avail himself of the proceeds of his industry oftener than once a year.

§ 811. If in the manufacture of a coach, there were five distinct operations, a perfect division of labor would require the employment of five workmen. Now if coaches were sold on a credit of six months, and if these five workmen should, within that period, produce carriages to the value of \$2,000; a capital of this amount would be necessary to conduct an

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mand of products upon the division of labor. § 809. Illustrate this effect in the case of merchants. § 810. Can a person of small capital avail himself of the same degree of benefit from the division of labor, as one of large capital? Why not? § 811. Explain, by example, the advantages of large capital

establishment of this description, in which the division of labor should be complete. But if the proprietor had a capital of only \$1,000, it is evident he could not employ the same number of workmen; some of them must perform several distinct operations; the labor and capital employed would be less productive; and, consequently, the products of this branch of industry must be sold at higher prices.

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## CHAPTER VII.

### *Division and Security of Property, an Encouragement to Industry.*

§ 812. WITHOUT a division of property, there would be little or no encouragement to industry. By a *division of property* is meant, that the total amount of the property of a community is divided among its members, so that each has a right to a certain part, which he can call his own, and to which no other person has a right. Without such a division, no man would be induced to lay up or preserve any thing; for men are little disposed to work for what they have no better right to than other men. This is the case with the Indian tribes. The land is held by them in common. No one can call any part of it his own; and no one is stimulated to industry. The highest object of each appears to be, to obtain a hut for his shelter, and the scanty fare on which he subsists from day to day. Hence, in every industrious community, enjoying the comforts of life, there is a division of property.

§ 813. The *security of property* also, is indispensable to the encouragement of industry. No community will be prosperous, unless its members be protected in the free enjoyment of the fruits of their labor. If what a man produces by his industry might be taken from him by others,

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§ 812. What is meant by a *division of property*? What is its effect upon society? § 813. What evils naturally result from the insecurity

there would be no inducement to labor for any thing beyond a bare subsistence. If in this country the right of property should cease to be protected, men would cease to labor. Industrious and orderly citizens would soon become indolent and vicious, and robbery and plunder would soon reduce all to a common level in poverty and debasement.

§ 814. In a despotic government, the people are usually poor and indolent, because the sovereign ruler has the power to dispose of their property. There is little encouragement to be industrious, since what is gained by labor is liable to be taken from its owner at the pleasure of the despot. Slaves are seldom industrious: the reason is, that what they earn is entirely at the disposal of their masters. They labor only because they are compelled to do so in order to avoid punishment.

§ 815. To protect mankind in the free enjoyment and use of the fruits of their labor, is the end of civil government. And it is the duty of the public authority, to encourage and promote industry by every means consistent with the rights and liberties of the citizens. It ought to secure to every person the free use and employment of his faculties, in such manner as he thinks most advantageous to himself, and to leave each to pursue such calling as he may prefer. It is because these privileges are enjoyed by the people of free governments, that they are more prosperous and wealthy than those under arbitrary governments.

§ 816. The security of the right of property is equally beneficial to all classes of society; to the poor as well as to the rich. If property were not protected, a sufficient quantity would not accumulate in the hands of any portion of the community, to enable it to give employment to other portions. The poor would be deprived of the means of supplying their necessities, and, consequently, of the ability to accumulate wealth. They have, therefore, an equal interest with the rich, in the security of property; for where this security is enjoyed, the poor may themselves become possessed of wealth.

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of the right of property? § 814. What effect has tyranny upon the industry of the people? § 815. How is the right of property secured to the members of a community? § 816. In what respect are the

§ 817. The unequal distribution of wealth among the members of a community, is caused, chiefly, by the different degrees of industry and economy prevailing among them. Sometimes, however, men are, by unavoidable or accidental circumstances, either reduced to poverty, or raised to a state of affluence. But these are only exceptions to the general rule. If an equal division of property were to be made among any people enjoying the right of property, inequality would soon reappear, and to the same extent as before. How unwise, then, are those who think the happiness of society would be augmented by making an equal distribution of property!

§ 818. The encouragement of industry requires, farther, that every man be left free to employ his labor and capital as he may choose; and that no unjust preferences be given, nor undue privileges granted, to some individuals over others, in facilitating the acquisition of wealth. Hence, a certain species of exclusive rights, properly called monopolies, are highly objectionable. A *monopoly* means the sole power or privilege granted to an individual or to a company, to buy and sell specific articles, or to trade with some particular country. Monopolies are often prejudicial to the public interest; because they enable these privileged persons to extort from others unreasonable prices, and unjust contributions.

§ 819. The same objections do not, however, lie against all companies incorporated by public authority. Corporations are sometimes created which are of great public utility. Roads, bridges, and canals have been constructed by companies authorized to levy contributions upon persons who pass or transport goods on them. These, strictly speaking, are not monopolies; because those who use these passages derive from their use a benefit equal, or more than equal, to the sum paid for such benefit; and also because every person is at liberty to use any other public road or channel of transportation.

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poor benefited by the security of property? § 817. How is the inequality of property among mankind to be accounted for? § 818. Are monopolies favorable to industry? What is a *monopoly*? § 819. Are all incorporations monopolies? Why are not railroad and canal com-

§ 820. Companies incorporated for these and other purposes are by some objected to, because the works which they construct, often prove to their proprietors a source of great wealth. But it must be considered, that such enterprises are attended with great expense and often with risk; and it is proper that those who run great risks should receive liberal encouragement. Many of the most useful works would never have been constructed without such encouragement; for no prudent man will invest a large capital in an uncertain undertaking, which does not afford the prospect of liberal remuneration.

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## CHAPTER VIII.

### *The Encouragement of Domestic Industry by Protective Duties.*

§ 821. THE object of protective duties has been stated to be the encouragement of domestic industry, in order to render a nation independent of foreign nations for the necessities of life. But the inquiry whether any government regulations of this kind have a favorable or unfavorable effect upon the productive industry of a nation, comes properly within the province of political economy.

§ 822. Among the numerous subjects embraced in this science, none has been more elaborately discussed by political economists, both writers and public statesmen, than the subject of protective duties; and yet there is none, probably, upon which there exists a more direct contrariety of opinion.

§ 823. Most of the authors of those treatises on political economy which are in general use in this country, and which are also in high repute in other countries, adopt and advocate what is called the system of free trade. They

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panies monopolies? § 820. Why is the prospect of a liberal remuneration necessary to induce investments in great enterprises?

§ 821. What are protective duties? What is their object? § 823. What is their supposed effect? § 824. Give an example illustra-

consider all duties upon foreign productions as unjust taxes upon the consumers of the commodities thus protected ; the effect of which is, the collecting of capital in the hands of the few, (the manufacturers,) and the impoverishment of the great mass of the community.

§ 824. The effect of the system may be explained, thus : Foreign broadcloth of a certain quality may be bought for four dollars a yard ; but cloth of a similar quality cannot be manufactured at home for less than five dollars a yard. In this case, no domestic cloth would be manufactured, because no man would manufacture it if he could not sell it for as much as it cost. But if the government should lay a duty of fifty per cent. on foreign cloths, those which had been bought for four dollars a yard, would now cost six dollars a yard ; for if the importer paid the duty of two dollars a yard, he must add the same to the price of the cloth. But as the home article can be afforded for a less price, no foreign cloths would be imported, and whatever more than four dollars should be paid for domestic cloth, would be taken from the pocket of the consumer, for the benefit of the manufacturer.

§ 825. A private individual will employ his capital in such business as he finds to be most profitable ; and with a part of his products, he will buy whatever he has occasion for. As has been observed, the hatter employs his whole capital in making hats ; the tailor and shoemaker employ theirs in their respective trades ; and each exchanges the products of his industry and capital for other things of which they may stand in need. And they do so, because they can purchase these necessities with less labor than it would cost to make them, or produce them in any other way.

§ 826. As with individuals, so with nations : If a foreign country can supply us with any commodity more cheaply than we can produce it, it is better for us to buy it with what we can produce to better advantage. The whole capital of a country will be employed in the business of production, and in such branches of industry as are most natu-

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ting the effect of a protective duty. § 825, 826. Show the analogy which is supposed to exist between the profitable employment of capital by individuals and that of nations. § 827. In what case is it



ra, and afford the greatest profit. Therefore, to divert the capital and industry of a country from their natural channel, must render them less productive.

§ 827. Suppose that a certain amount of the capital of this country is invested in agriculture; and that one half of the products of this branch of industry will buy all the manufactured goods wanted for domestic consumption. Now if one half of the capital so invested in agriculture, were withdrawn from that department of industry, and employed in manufactures; and if it should not, in the latter employment, produce an equal amount of goods, the nation must sustain a loss. If, to supply the people of the United States with cotton and woollen manufactures, it were necessary to employ fifty millions of dollars of capital, when thirty millions invested in agriculture would produce an equal amount of value, it would be economy to employ capital in the latter business, and exchange the products of agricultural, for those of manufacturing industry.

§ 828. Another disadvantage of the protective policy, according to economists, is, that by raising the price of cloth, a large portion of the consumers, those of the poorer classes, would be unable to purchase, and the demand for it will be lessened. Farther, if the price should be increased fifty per cent., two yards would cost as much labor as three yards did before the duty was laid. And, although the whole industry of the country will be employed in production, it will be less profitably employed than before. But as capitalists are protected, the loss necessarily falls upon the laborers, who are obliged not only to pay higher prices for the goods they buy, but also to work for lower wages than formerly.

§ 829. Hence the policy of economists is, to leave things to take their natural course. Let capital and industry be left entirely free from all interference on the part of the government. They will naturally be employed where they can

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supposed that the withdrawal of capital from any branch of industry would be injurious to production? § 828. What is the supposed effect of protection upon the industrious and poorer classes? What effect upon production? § 829. What is supposed to be the result of leaving the capital and industry of the country entirely free from government regulations?

be made most productive. In a new country, where land is cheap and capital small, agriculture is the natural and the most profitable employment. As a country increases in population, and the price of land becomes dear, the growing capital of such country will naturally and gradually be invested in manufactures. And, in due time, the superabundant capital will be extended to foreign commerce. Hence, it is presumed, that all efforts on the part of government to increase production, by diverting the capital and industry of a nation from their wonted channel, not only fail of their intended object, but work a direct injury.

## CHAPTER IX.

### *The Encouragement of Domestic Industry by Protective Duties, continued.*

§ 830. THE preceding chapter contains the views of some of the most distinguished writers on political economy, in relation to the effects of the attempts of public authority to increase the prosperity and wealth of a nation, by encouraging domestic industry by protective duties. The theory of these economists has, however, been rejected by a majority of the statesmen of the principal European nations, and of this country ; and as this theory has been hitherto contravened by the established policy of the most prosperous commercial nations, it is thought proper to state the arguments and reasons by which this policy is supported ; as the question whether the protective system shall be abandoned or perpetuated in this country, must be decided by those who are to be our future legislators.

§ 831. Says Mr. Say, " With respect to the wild or antiquated theories so often produced and reproduced by authors who possess neither sufficiently extensive nor well-digested

§ 830. Does the theory of economists noticed in the preceding chapter comport with the practice of nations ? § 832. What has been the

information to entitle them to form a sound judgment, the most effectual method of refuting them is to display the true doctrines of the science with still greater clearness, and to leave to time the care of disseminating them. We otherwise should be involved in interminable controversies, affording no instruction to the enlightened part of society, and inducing the uninformed to believe, that nothing is susceptible of proof, inasmuch as every thing is made the subject of argument and disputation."

§ 832. The ability of this writer is universally acknowledged; but, although he displays most of the doctrines of political economy with great clearness, the subject under consideration is one on which statesmen of the highest eminence differ from him. The doctrine of protection is doubtless one of the "antiquated theories" alluded to in the above quotation. They are, however, theories which have been carried into practice by nations enjoying the highest degree of prosperity; and as this prosperity is so extensively attributed to the policy of encouraging domestic industry by protective duties, the opinions of these statesmen are deemed worthy of a place in this work.

§ 833. The advocates of protection do not admit that the tax on importations is a loss to the consumer to the amount of the duty paid. They admit that the duty imposed on a foreign product generally causes a rise in the price of such product; but they maintain, that this rise will continue but a short time; and that the advantages which are derived by the community from the encouragement given to industry, overbalance all the inconvenience and loss that may have been occasioned by the imposition of the duty. This is accounted for on natural principles, and proved by facts.

§ 834. First, the conducting of a new business is generally attended with some disadvantage, for the want of the requisite skill and economy: but these are readily acquired by a short experience. Secondly, when any business is effectually protected, it draws into it many adventurers; large

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policy of the most prosperous nations? § 833. What effect do the friends of production ascribe to protective duties? § 834. Upon what principles is the reduction of the prices of protected products ac-

investments of capital are made in it ; the market is speedily filled with its products by the numerous producers ; and each, not only desirous, but obliged to sell, will offer his goods at such prices as will ensure their sale. Thus, with the progressive improvements in machinery, and increase of skill in manufacturing, the productiveness of this branch of industry increases, and prices fall.

§ 835. But the friends of the protective system maintain, that the nominal price of a domestic commodity may remain above the price at which the foreign could be purchased were it free of duty, and yet the consumer may find the domestic the cheapest. The cheapness of a commodity depends upon the means and ability of the consumer to pay for it. If the farmer, for instance, cannot sell what he produces, he cannot buy. If foreign nations will not receive our products in exchange for their own, we cannot buy of them at any price. And as that is the cheapest which costs the least amount of labor, a domestic product, at a much higher nominal price, may be cheaper than the foreign. When the demand for a commodity is not equal to the amount produced, the price must fall ; and if there be no demand for it, the production must be abandoned altogether.

§ 836. By the encouragement of manufactures, a demand for agricultural products is created at home. This home market so raises the price of the produce of the soil, as to enable the farmer to pay a higher price than before. This market is made by drawing off a portion of the capital and labor of the country from agriculture, and investing them in another branch of industry. By this means, the number of producers of agricultural products is comparatively diminished, while the number of consumers of these products is greatly increased : and thus the consumption and production of the country are in a measure equalized.

§ 837. Suppose three fourths of the people of the United States to be engaged in agriculture, and the remaining one

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counted for ? § 835. Is the cheapness of an article invariably determined by the amount of its nominal price ? Why not ? § 836. What effect has the encouragement of manufactures upon the market for agricultural products ? How is this accounted for ? § 837. What would be the effect of a superabundance of agricultural products upon

fourth to constitute the professional and mechanical classes; and suppose that one half of the produce of the former is sufficient to supply the whole population of the country. Now, if there were no foreign demand for the surplus products of agricultural labor, such labor would be poorly paid, and agricultural produce would bear a low price. Suppose, however, that the price of wheat is now one dollar a bushel, and foreign broadcloth four dollars a yard, as in the case before supposed. (§ 824.)

§ 838. We will next suppose that the government, in order to encourage domestic manufactures, imposes a duty of fifty per cent. on foreign broadcloth. A part of the capital of the country will now take a new direction. New employment will also be given to a part, (one third let us suppose,) of the three fourths of those who had been engaged in agriculture, who will now find employ in the erection of manufactories, the making of machinery, &c.; and also in the construction of roads and canals; for it is to be presumed, that the increased demand for domestic products of various kinds, which are to be conveyed from one part of the country to the other, will require increased facilities of transportation.

§ 839. One half only of the laboring population will now be employed in agriculture; and the non-producers of agricultural products composing the other half, being twice as numerous as before, it will be reasonable to suppose that the price of wheat will be at least one dollar and fifty cents. If now the price of broadcloth be six dollars a yard, the same quantity of wheat will purchase a yard as when the price of cloth was four dollars. But as the domestic article can be afforded for five dollars a yard, we may presume that the competition among the manufacturers will have reduced the price to five dollars. In this case, a less quantity of wheat will buy a yard of cloth than before. And if, as it is said facts have proved, articles of home manufactures eventually become as cheap as the foreign, the consumer will realize a still greater benefit from the protection.

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prices and labor? § 838. What, in this situation of things, would be the consequence of a duty on foreign manufactures? § 839. What will be the results of increasing the proportion of manufacturing

§ 840. The result, however, of no measure can be calculated with mathematical accuracy; but it is believed, that, in the case above supposed, the benefits ascribed to protection do not exceed what may be reasonably anticipated; because the impulse given to all branches of industry by the increased demand for labor, will have a tendency to stimulate each laborer to perform a greater amount of labor; and every advance towards perfection in manufactures causes a decline in the price of manufactured products.

§ 841. Dr. Smith admits that there are "two cases in which it will generally be advantageous to lay some burden upon foreign, for the encouragement of domestic industry." First, to encourage a particular sort of industry necessary for the defence of the country. Thus, the security of a nation is said to depend much upon the number of its sailors, and the extent of its shipping; and to encourage the building of ships, nations have enacted laws granting peculiar privileges to their own navigation. In the navigation act of Great Britain, enacted many years ago, a provision was inserted, requiring that no ships, except those whose owners or masters and three fourths of the mariners were British subjects, should be permitted to trade to British settlements and plantations, or be employed in the coasting trade. The navigation laws of this country also, give a preference to our own shipping, by the imposition of discriminating duties.

§ 842. For the same object, the security of the nation, a government may, it is said, encourage by duty, the manufacture of gunpowder, and other munitions of war, that in case of an interruption of its trade with other nations in times of war, it may not be dependent on them for the means of defence. But if it be proper for a nation to make itself independent of others for these, why is it not expedient to be independent for food and clothing also? The

labor? § 840. How does the demand for labor affect the quantity performed by each laborer? How does improvement in manufactures affect their price? § 841. For what reason does Smith admit the propriety of encouraging domestic navigation, by discriminating duties? § 842. What particular articles of manufactures are en

want of these, though less serious at such a crisis, would be attended with great inconvenience and difficulty.

§ 843. The second case in which the propriety of a tax upon foreign industry is admitted, is, when a commodity of home production is already subject to duty abroad. It may then be proper to impose a duty on a like article of the foreign country. Suppose that the United States were at present dependent for manufactured goods on Great Britain; and that the latter should exclude our agricultural productions from her markets by prohibitory duties, choosing to supply her own population. It is evident that we could gain nothing by imposing a like duty upon her *grain*, because she produces none for exportation. Would it not be necessary to tax her *manufactures*?

§ 844. But it is said, that two countries seldom excel in the production of the same kind of commodities; and that it is for their mutual interest to confine their industry to the production of those commodities in which they respectively excel, and to procure, by exchange, what they do not themselves produce. But nations may mistake their true interests; and, therefore, whether a nation injure or benefit itself by a restrictive policy, other nations can gain the advantages of equal trade, only by the adoption of a similar policy.

## CHAPTER X.

### *The Encouragement of Domestic Industry, continued.—Origin of the Protective System in this country.*

§ 845. In the last two chapters have been presented, briefly, the opinions of political economists, concerning the policy of encouraging domestic industry by protective duties. As

couraged for the same reason? § 843. In what other cases is the propriety of a tax on foreign industry admitted? § 844. In what case does the adoption of a restrictive policy become necessary?

the protective principle constitutes one of the most prominent features in the policy of the principal commercial nations; and as it is deemed important that every citizen understand the measures of the government under which he lives; it is proposed, for the benefit of the American student, to pursue the subject in the present chapter, by exhibiting the authority and reasons for the adoption of the protective system of the United States; together with its origin, progress, and supposed practical operations.

• § 846. The inefficiency of the former government of the United States, has frequently been alluded to in the progress of this work. One of the material defects of the confederation, was considered to be the want of provision for countervailing the restrictions imposed upon our trade and commerce by foreign nations. Soon after the peace of 1783, and the restoration of commerce between this country and Great Britain, the disadvantages of the restrictive measures of the latter began to be again realized. Complaints became general; and attempts were made by the states, separately, to counteract the unequal laws of Great Britain. But owing to the weakness of the federal government, and the want of concurrence among the state governments, in any system of measures, she was enabled to avail herself of the benefits of the freedom of trade allowed by our laws, and the monopolies secured to her by her own.

§ 847. A convention of commissioners from the several states was at length proposed, for the purpose of providing some remedy for the evils complained of. Commissioners from some of the states assembled; but finding their powers inadequate, they proposed a convention on a more enlarged plan, for a general revision of the federal government. "From this convention," says one of its members, (Mr. Madison,) "proceeded the present federal constitution, which gives to the general will the means of providing, in the several necessary cases, for the general welfare; and particularly in the case of regulating our commerce in such manner as may be required by the regulation of other coun-

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§ 846. What was the condition of this country after the peace of 1783, in respect to its trade with Great Britain? § 847. What measures were taken to remedy the evils complained of? § 848. What



tries." At the first session of the first congress under the new constitution, a law was passed, one of the declared objects of which was, "the encouragement and protection of domestic manufactures, by duties on goods, wares, and merchandise imported."

§ 848. The opinions of the framers of the government respecting the expediency of encouraging domestic industry by protective duties, were the same as are held by the advocates of protection at the present day. It was the opinion of Washington, that "our country ought not to remain dependent on foreign supply, always precarious, because liable to be interrupted."

§ 849. It was remarked by Mr. Jefferson, that, "when a nation imposes high duties on our productions, or prohibits them altogether, it may be proper for us to do the same by theirs." In relation to the protection of manufactures, he observed: "The oppressions on our agriculture, in foreign ports, would thus be made the occasion of relieving it from a dependence on the councils and conduct of others, and of promoting arts, manufactures, and population at home." At a later period, he remarked that "the history of the last twenty years had been a sufficient lesson for us to depend for necessities on ourselves alone."

§ 850. In recommending to congress some action upon the subject of protection, Mr. Madison, after expressing the belief that manufacturing industry, by a proper encouragement, "will become, at an early day, not only safe against competitions from abroad, but a source of domestic wealth, and even of external commerce," continues as follows: "In selecting the branches more especially entitled to the public patronage, a preference is obviously claimed by such as will relieve the United States from a dependence on foreign supplies, ever subject to casual failures, for articles necessary for the public defence, or connected with the primary wants of individuals."

§ 851. Respecting the effect of protection upon price,

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was the opinion of Washington on the propriety of protection? § 849. State the reasons of Jefferson in favor of the same principle. § 850. For what reasons did Madison recommend the subject to the action of Congress? § 851. What was the opinion of Hamilton as to the

Mr. Hamilton observed: "When a domestic manufacture has attained to perfection, and has engaged in the prosecution of it a competent number of persons, it invariably becomes cheaper." "The internal competition which takes place, soon does away every thing like monopoly, and, by degrees, reduces the price of the article to the minimum of a reasonable profit on capital employed. This accords with the reason of the thing and with experience." "In a national point of view, a temporary enhancement of price must always be compensated by a permanent reduction of it."

§ 852. The opinions above cited accord with those of our statesmen in later times, in the following particulars: (1.) The superiority of a home market, on account of its greater steadiness and certainty; (2.) the inexpediency of being dependent for necessities on foreign nations; (3.) the ultimate reduction of price as the effect of the protection of domestic industry. And the encouragement of domestic manufactures was recommended by every administration, (unless the second be an exception,) for more than thirty years, under the present constitution, before any general system of protection was established; the demand for our agricultural products, caused by the wars in foreign countries and in our own, during a great part of that period, rendering it less necessary.

§ 853. But the causes which had kept up this demand for American produce having ceased to exist, a law was enacted in 1816, having in view the encouragement of domestic industry by protective duties. Among the principal articles of manufacture protected by this act, were coarse cotton goods. In 1824, a general act was passed, amending all former acts, greatly extending the tariff, and giving more effectual encouragement, by increased duties, to such manufactures as were supposed not to be adequately protected by the laws then existing.

§ 854. This act, however, did not pass without strong

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effect of protection on the price of protected products? § 852. What are the principal advantages which were then considered to attend the encouragement of domestic industry? § 853. What was the object of the law of 1816? When was the general tariff act passed? § 854.

opposition. It was said, that the protection of manufactures would ruin the agricultural and commercial interests. The contemplated duties would be taxes to their full amount upon the consumers of all articles protected. The laboring classes of the community would be depressed for the exclusive benefit of the manufacturers, who would reap excessive profits from their business. Monopolies would be established; and the few would be enriched at the expense of the many.

§ 855. On the other hand, it was contended, that, instead of being interrupted, agricultural prosperity would be promoted by the proposed protection of manufactures. A larger portion of the population would be dependent on the farmer for subsistence; the division of labor would be carried more nearly to a state of perfection; and labor, consequently, would be rendered more productive and profitable.

§ 856. Commerce, too, it was believed, would be increased rather than diminished. Those foreign manufactures which were to be affected by the proposed duties, were chiefly from countries which would still be dependent on us for the few articles which their selfish policy had not prohibited. The trade, therefore, with these countries could not be greatly diminished; whereas the stimulus which would be given to the industry of the nation in the several branches of manufacture, would increase the amount and variety of domestic products, which would find a market in other countries; and the increased trade with these would more than compensate for the loss of trade with the former.

§ 857. With regard to the accumulation of wealth in the hands of the few, and the reduction of the wages of labor, it was observed, that fortunes were not more likely to be acquired by manufacturing, than by foreign commerce, or planting. Labor dependent upon manufacturing wealth, would be no more depressed than labor dependent upon agricultural or commercial wealth. The low prices of lands

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On what grounds was this act opposed? § 855. How were these objections answered? § 856. What different opinions were entertained as to the effects of protection upon commerce? § 857. What reasons were there for supposing that protection would not cause the depres-

in this country would furnish adequate security against the oppression of the laboring portion of the community by capitalists.

§ 858. Another objection, the most plausible, perhaps, if not the most weighty, that was urged against the protective system, was, that it would force capital and labor into new and unnatural employments, for which the country was not prepared, in consequence of the present high price of wages. Manufactures could not be successfully established, it was said, until the laboring population should become so numerous as to be compelled to work for the mere necessities of life, as in the manufacturing nations of Europe, a condition to which it was not desirable to see the laboring classes of this country reduced. But while labor continued to receive a fair compensation, higher prices must be paid for the home manufacture.

§ 859. To this objection it was replied, that there was already a want of employment in existing occupations, which were overflowing with competition. Some new field of business ought to be opened for the relief of the laboring classes. This relief would be afforded by the system proposed. The wages of laborers would be raised; and still the measure would ultimately effect a reduction of prices. For it must be remembered, that in manufactures the principal labor was artificial, not natural labor; and that the great improvements in machinery, and the possession of the raw materials in vast abundance, or the capacity to produce them, would, more than low wages, reduce the price of manufactures. The advocates of protection prevailed. The system was adopted: and, in order to judge of the correctness of the theory on which it was based, it will be necessary to see what have been its practical operations.

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sion of the poor and laboring classes? § 858. What effect upon capital and labor was apprehended from protection? Why was it supposed that this country could not compete with others in manufacturing? § 859. What answer was given to these objections? ➡

## CHAPTER XI.

*Effects of the Protective System of this Country.*

§ 860. PRIOR to the late war, (1812,) the coarse cotton goods consumed in this country, were imported from India, and cost the consumers about 25 cents a yard. During the war, our supplies being cut off, cotton factories were to some extent put into operation, and a partial supply was furnished. But after the close of the war, the India goods being again imported, most of these establishments were ruined. By the tariff of 1816, the home market was secured to the domestic manufacturer; and such were the combined effects of competition, and the improvements in skill, labor, and machinery, as to enable the consumer, a few years afterwards, to purchase a superior article of domestic manufacture, for 8 cents a yard, being less than one third of the former price.

§ 861. The duty on a square yard of cotton imported, if estimated by the ad valorem duty to which it is subject, would be about  $8\frac{1}{2}$  cents. Since the passage of the act imposing this duty, cloth of the above description has been purchased for less than 8 cents a square yard, being less than the duty by which its manufacture is protected. The low price is the natural effect of the competition among manufacturers, and the superabundance of the quantity manufactured. Thus, instead of being taxed with the amount of duty imposed, in the increased price of the protected product, the consumer has been enabled to purchase such product at a price less than the duty by which it is protected; a price which subjected the manufacturer to a loss, instead of affording him an excessive profit. Prices, however, soon advanced, until they found their natural level; and cotton cloths may be bought of the manufacturer at prices little higher than the amount of the protecting duty.

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§ 860. What is the result of the protection of the cotton manufacture in this country? § 861. What is the duty on a square yard of cotton cloth? Does the consumer pay a tax of this amount on a yard of cloth? How are we to account for the present low price

§ 862. Iron, also, has considerably fallen in price. Sheet iron, which was in 1828 protected by a duty of 3 cents a pound, was reduced from \$180 to \$140 a ton. Hoop iron subject to the same duty, was reduced from \$150 to \$120 a ton. Small round iron had never been made in this country before the protection given to it in 1828, by a duty of  $8\frac{1}{2}$  cents a pound. The price had been \$150 a ton; but it was reduced to \$135. The manufacture of nails was protected in 1828, by a duty of 5 cents a pound. The price had been from 7 to 8 cents a pound; but in 1830 it had fallen to  $5\frac{1}{2}$  cents. Hammered bar iron, with a protecting duty of \$18 a ton in 1824, was sold in 1830 for \$85.

§ 863. Window glass, such as was sold in 1816 for \$15 the 100 square feet, was a few years thereafter sold for \$7.50, under a protecting duty of \$4. The price of all glass wares was reduced in the same proportion. Lead, gunpowder, spirits turpentine, castor oil, and many other articles, have greatly fallen in price since the production of them has been encouraged. Many of them are now sold at about half their former prices; being, in many cases, less than the amount of the protecting duty.

§ 864. Leather, and all manufactures of leather; cabinet-ware, and other manufactures of wood; hats, and almost all the products of mechanics, were protected by a duty of 30 per cent.; but, although an advance in the prices of these articles was apprehended, prices have uniformly declined; and the production of these manufactures was soon increased to such extent, as to furnish large quantities for exportation.

§ 865. Although the reduction of prices as above stated is universally admitted, there are those who ask: Would not the same reduction have taken place without protection? Or, could we not have been supplied with *foreign* manufactures at still lower prices, if they had been left free from

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of this article? § 862. What reductions have been made in the prices of different kinds of iron? § 863. What has been the reduction in the price of glass manufactures, lead, gunpowder, &c. § 864. By what duty have the products of mechanical labor been protected? And with what results? § 865. What reason have you for supposing that we could not be supplied with foreign manufactures, if they were

all duties, especially as the wages of labor are lower in foreign manufacturing countries? The evidence that we should not have been supplied equally cheap, consists, in part, in the fact, that the consumers in this country of goods which have been effectually protected, are supplied more cheaply than the people of Great Britain, the principal manufacturing nation of Europe, and from which, mainly, our supplies would have been derived.

§ 866. It is proper here to notice the error of those who have supposed, that goods could not be manufactured as cheaply in this country as in England, because wages are lower in the latter country than in the former. The high prices of provisions; the burthensome expenses of the government paid in tithes, and taxes of various kinds; together with the ground rents, and the transportation of the raw material of the cotton manufacture, overbalance the single advantage of the lower price of wages.

§ 867. Nor have the laborers in our manufactories experienced that depression which was deemed the certain consequence of a successful experiment in manufacturing. As evidence of the liberal compensation of labor in these establishments in this country, it may be stated, that, in a single manufacturing town in New England, \$100,000 have been deposited in the savings bank in that place, by factory girls, comprising but a comparatively small portion of the whole number employed in the town. And much besides is deposited in other institutions, owing to the fact, that each is allowed interest only on a sum of limited amount; so that when they reach this amount, they are obliged to invest elsewhere.

§ 868. The advantages of a home market anticipated by the agriculturist, have also been realized. The foreign market is always uncertain; and a dependence on it subjects the farmer to frequent disappointments and losses; the foreign demand being governed by the contingencies of

admitted free from duty, than we now are? § 866. What considerations of a contrary nature, overbalance the advantage of low wages in England? § 867. Are factory laborers in this country duly rewarded for their labor? § 868. What causes render foreign markets uncertain? Give some examples of this uncertainty, and of the

plenty and scarcity, of peace and war, and changes in the policies of nations. Of the uncertainty of foreign markets, we have had numerous examples. In one year we exported 1,500,000 barrels of flour, and in the second year thereafter, only 750,000. The value of all kinds of vegetable food exported during the former year, was \$22,000,000; during the latter, the total value of such exports was but \$9,000,000. To some place we have one year sent several hundred thousand barrels of flour; the next year scarcely a barrel has found a market in such place.

§ 869. The home demand is not only more steady, but much greater than the foreign. The quantity of vegetable food annually consumed in the United States, is ascertained to have been, during a given period, more than twenty times as great as the whole amount exported during the same time. In meats, the disproportion was much greater. Of the surplus grain and flour produced in the United States, more finds a market in three manufacturing states of New England, than in all foreign markets put together. Hence is perceived the value of a home market for the products of domestic industry.

§ 870. The productiveness of agricultural industry has been greatly increased. Not only does it supply the new demand created for its products at home; but it furnishes for exportation as great an amount as before, and even greater. In 1823, the year preceding the tariff of 1824, the amount of cotton exported was 173 millions of pounds, and of flour, 756,000 barrels; together valued at \$25,400,000. The exports in 1826, two years after the tariff, were 204 millions of pounds of cotton, and 857,000 barrels of flour; the value of which was \$29,150,000. In 1829, the quantity of cotton exported had increased to 265 millions of pounds, which alone was worth \$26,575,000.

§ 871. The commerce and navigation of the country also have continued to increase with equal, if not greater ra-

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fluctuations of foreign demand? § 869. What are the advantages of the home market enjoyed by the people of the United States? § 870. State the effect of the tariff policy upon agricultural industry. § 871. What has been the state of our commerce and navigation since the adoption of this system?



modity, since the adoption of the protective system. We conclude, therefore, from what has been said on this subject, that, although free trade between nations is desirable, and might be most equally advantageous to all; the prohibitory policy of some nations, may impose on others the necessity of protecting their own industry, by counter restrictions and prohibitions.

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## CHAPTER XII.

### *Effects of Internal Improvements on Productive Industry.*

§ 872. THE influence of protection upon the productive industry of a nation, has been considered in preceding chapters: and it has been seen, that one of the most important results of the measure, is the increased demand for domestic products. But a market may be so distant from the place of production, or so difficult of access, as to render it of little value to the producer. Not many years ago, grain produced in the western part of the state of New York, did not find a market where it now does, in the towns and cities on or near the Atlantic coast. Nearly the whole value of a bushel of wheat would have been consumed in the expense of its transportation thither. Not enough would have been saved to compensate the cost of its production.

§ 873. Hence we perceive the utility of canals, railroads, and other channels of communication, to facilitate internal commerce. The productive energies of a nation are thus powerfully increased. By means of internal improvements, the products of the most distant parts of the country may be brought into market at a small expense. Since the completion of the Erie canal, a bushel of wheat

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§ 872. What is the effect of the distance of market upon the price of a product? § 873. Why does a bushel of wheat command a higher price now in the western part of New York and Ohio, than prior to 1825? What are the general effects of the construction of

commands nearly as high a price in the western, as in the eastern part of the state, because the cost of transportation has been reduced to a very inconsiderable amount. Formerly, there was little to encourage production, farther than was necessary to supply the wants of the producers. But by the cheapness of transportation, the amount and prices of products, the value of land, and, consequently, the wealth of the inhabitants of these remote parts of the country, have been greatly increased.

§ 874. Internal improvements also cheapen the necessities of life. By the diminished cost of transportation, most articles of merchandise, either of foreign or domestic production, may be afforded in the interior and more distant parts of the country, at a small advance from the cost at the place of manufacture or importation. In some parts of the United States, before the present advantages of internal intercourse were enjoyed, a bushel of wheat could be obtained in exchange for a yard of cotton cloth. In the same places, a bushel of wheat has, since that time, purchased eight or ten yards of similar cloth.

§ 875. It seems, then, to be the duty of the government to encourage production by authorizing the making of internal improvements. But objections are sometimes made to the application of the public money to the construction of works, the benefits of which are to be enjoyed only by a small part of the nation. But if it be the duty of a government to promote the general welfare, it cannot with justice withhold relief from that part of the population which does not enjoy the advantages of commercial intercourse. It is one of the cardinal principles of the social compact, that mutual sacrifices, (if indeed they may be so called,) are to be submitted to for the general good.

§ 876. But it is an error to suppose, that the benefits of these improvements are limited to those for whose relief they are primarily intended. Suppose that certain of the western states had no other than the ordinary means of

this work? § 874. What has been the effect of internal improvements on the price of merchandise in distant parts of the country? § 875. Is it the duty of government to make internal improvements? § 876. Show how the whole country is benefited by improvements

communication, by land, with the Atlantic cities: these fertile lands, owing to their remoteness from the great markets of the nation, would possess little value. Would not policy, as well as justice to this sequestered portion of the union, dictate the construction of canals and rail-roads, as mediums through which vent might be given to its abundant products? And would not the trade thus opened be beneficial to the country at large? A powerful impulse would be given to industry in these western states. Both the quantity and prices of their products would be increased; and every article of eastern merchandise consumed in those states would be cheapened; and the manufacturing and commercial towns would be profited by this extension of their trade.

§ 877. Hence we are not to judge of the economy of a government, by the amount of money in its treasury. A person who hoards the yearly income of his industry, may have the merit of being frugal; but he is much the better economist, who employs the annual increase of his capital and labor in improving and extending his business; and, by the additional employment thus given to industry, he contributes essentially to the wealth and happiness of the community. So a nation or a state may wisely expend a part of its surplus revenue in the construction of works of public utility. By this means commercial intercourse will be facilitated; industry will be stimulated; the wealth of the country will be augmented; and, in due time, the money expended will be reimbursed.

§ 878. But how ought the expenses of internal improvements to be defrayed? Most of the canals and rail-roads in this country do not pass from one state into another; but are confined within the limits of a single state. They are therefore more properly made by the authority of the state governments, than by that of the general government. Either companies, incorporated by a law of the state, construct these works at their own expense; or they are ex-

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which facilitate transportation. § 877. Is it good economy for a state to expend money in the construction of canals and rail-roads? What is the effect of such a policy? § 878. At whose expense ought these works to be made? What objection is there to raising the

cuted by the state itself. And to provide funds for the purpose, it may lay a direct tax upon the property of the citizens. But though this is the most equal mode of taxation for the support of government, it is otherwise in making internal improvements, as large portions of the state derive much less benefit from them than others.

§ 879. When a canal or rail-road is to be made by the state, the state borrows the money required to accomplish the undertaking, and relies for the means of its repayment on the revenue to be derived from the work. Thus direct taxation is avoided, and the expense of the work is ultimately paid by those who are benefited by the use of it.

## CHAPTER XIII.

*Exchange.—The Advantages of a Division of Labor in Exchange, and of the Frequency of Exchanges.*

§ 880. IN considering the causes of the productiveness of human industry, we have seen that one of the principal of these causes is the division of labor, by which every man is confined to one occupation, and, generally, to the creation of a single product, or even to the performance of a single operation in the manufacture of a product. And we have seen, also, that an individual or a nation increases in wealth, in proportion as labor is rendered more productive.

§ 881. But as wealth consists essentially in the means of gratifying the desires, or of satisfying the wants of mankind, the most abundant production of any one commodity, unaccompanied by any farther exertion or act of labor, cannot make a man wealthy. Whatever quantity of any single product a man may acquire by his industry, such pro-

money exhibited in their construction by the direct taxation of all the people? § 879. How may direct taxation be avoided? Can you tell how the revenue from a canal is produced?

§ 880. What has been shown to be a principal cause of the productiveness of industry? § 881. What are the benefits derived from

duct is capable of supplying but one of his numerous wants. A part only of what he produces is of any value to him, while he keeps it in his possession. If a farmer produce annually two hundred bushels of wheat, and his family consume but fifty bushels, the remainder would be of no great value, if he could not procure for it other necessities. Hence we see, that, after production, the act or labor of *exchange* is necessary, before we can avail ourselves, to any considerable extent, of the objects of our industry.

§ 882. If every person should produce for himself all things essential to his existence and comfort, there would be no need of exchanges. But this, as we have seen, would be bad economy. Almost every person is better fitted for some particular kind of employment than for any other; and every man does best when he pursues a single occupation, and procures, by exchange, such of the products of other men's labor as he needs. Every laborer consumes a greater variety, and many a greater value of the products of the labor of others, than of those which he produces himself. Exchange, then, becomes an important business in economy, and next demands our attention.

§ 883. It is obvious, that, if a person, whenever he finds himself in want of any thing which he does not produce, were under the necessity of procuring such article for himself by a specific act of barter or exchange, much time would be spent in making exchanges. Many articles necessary to man's convenience, come from distant parts of the country, and from foreign countries. These could not be procured without still greater expense of time and labor, if they could be gotten at all. So that a person might about as well work at the different trades and occupations, and supply himself with such things as he could produce by his own labor, and dispense with those which it required so great a sacrifice to obtain.

§ 884. Thus we see that a division of labor is no less

the *exchange* of products? § 882. Why is it best for every person to pursue a single occupation? § 883. If every producer were compelled to make an exchange directly with every other producer for what he wants, what would be the consequence? § 884. Wherein consists the benefit of a division of labor in the business of exchange?

necessary in the business of exchange, than in that of production. A very few persons may conduct the exchanges of a great number. If, therefore, one or more persons were thus employed in every neighborhood or town, a vast amount of labor and time would be saved to the community. The persons engaged in this business are called merchants: they receive from the producers the various products of their labor, in exchange for such wares and merchandise as they keep on hand to supply the wants of their customers; and the products thus received, are again disposed of to others who want them for their own consumption, or are carried to the cities, and exchanged for new supplies of such commodities as are not produced at home. These are called *retail merchants*; because they sell to the consumers in small quantities.

§ 885. There is another class of merchants called *wholesale merchants*. They reside in large commercial towns and cities, and conduct the exchanges between this country and foreign countries, and sell in whole pieces or packages to the retail merchants. They also purchase goods in large quantities for the same purpose, from the manufacturers. Here again we see the necessity of a division of labor in effecting the exchanges of a country. The retailer could not afford to import goods in so small quantities as he needs to supply his customers. Nor could the importer break open his hogsheads, or divide his pieces or packages, in order to sell immediately to consumers. He confines his commercial transactions to the importing and wholesale business; and thus he can supply a great number of retail merchants: and the expense of importing as many goods as would supply them all, is little more than it would cost each to import for himself the small quantity necessary to meet the demands of his customers.

§ 886. But there is another class of wholesale merchants, more numerous than that above described. They do not import goods. They buy of the importers in large quanti-

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What is the business of a *retail merchant*? § 885. What is the business of a *wholesale merchant*? Show the necessity and utility of a division of labor in mercantile business? § 886. How is the wholesale business divided? What is the benefit of this division?

ties than the retail merchants wish to purchase, in order to sell to the latter. And it is from this class of wholesale dealers that most of the retail merchants in the country towns receive their supplies. When the cargo of an importer arrives in port, his object is to dispose of it as soon as possible, that he may be enabled with the proceeds to refit his vessel for another voyage, with as little delay as may be. He therefore generally sells his cargo to a few of these wholesale dealers, rather than to keep his vessel and seamen in port, unemployed, till he can dispose of all his goods to a hundred country retailers.

§ 887. Thus we see how the community is benefited by these several classes of exchangers; and we see also the mistake of those who suppose, that, as one class of the community increases in wealth, others must of necessity grow poor. Who does not perceive, that the great body of consumers share equally with the merchants in the advantages of these exchanges. Although the prices of the goods they buy, are augmented by every exchange, it is vastly better for them to pay a reasonable profit to the merchant who furnishes them with every article in just such quantities as they desire, than to be obliged to buy of the wholesale dealer in large quantities, or than to transport them from the place of importation, even though they might be purchased in any quantity desired.

§ 888. Hence we perceive, too, the dependence of one part of the community upon another, and the benefits of this dependence. It tends to strengthen the bonds of society, and to promote harmony and good will among its members. A like benefit results from the intercourse between nations dependent upon each other for those productions which contribute to their prosperity and happiness. This mutual dependence has, doubtless, been the means of reconciling differences between nations, which, under other circumstances, would have terminated in bloodshed.

§ 889. It is evident, moreover, that all parties are benefited by *frequency* of exchanges; or, as it is usually termed,

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§ 887. Which of the two classes, merchants or consumers, are most benefited by mercantile operations? § 888. What good effect results from the dependence of individuals or nations upon each other?

a brisk circulation: by which is meant the disposal of a commodity after its completion, or the application of it to its intended purpose, as soon as possible. A cotton trader, having purchased a quantity of cotton, wishes to dispose of it immediately, in order to the reinvestment of his capital in a new operation. He sends it to New York, and receives in exchange for it goods which he can again exchange for a new cargo of cotton. The New York merchant sends the cotton to the manufacturer in New England, from whom he receives cotton cloths, which he disposes of to country merchants, for the country produce which they have taken from their customers; and the cloth is again sold by the country retailers to consumers: and all these exchanges may have been made in two or three months.

§ 890. Now we may see how each of these persons has been benefited by this active exchange of commodities. The productive capital of the merchants and manufacturer, having reproduced itself four times during the year, their profits have been much greater than if but one investment had been made during the same time. And the consumers have been benefited by having been enabled to purchase cloths at cheaper rates. For if the cotton had been a whole year in reaching the consumer, each capitalist, when he sold the product, must have added to the profit charged, three times as much interest on his capital, as if it had returned to him once in every three months.

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## CHAPTER XIV.

### *Origin of Money, and its Utility in Exchange.*

§ 891. FROM what has been said of exchange, we see that it is highly conducive to the happiness of mankind,

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§ 889, 890. What is meant by frequency of exchange? Illustrate, by an example, the benefits to all parties, of a brisk circulation of commodities.



enabling them to avail themselves of a greater number of the conveniences of life ; and also, that a division of labor in effecting exchanges, is necessary to render them most beneficial to all classes of the community. Upon farther examination of the subject, we shall find important difficulties in making exchanges ; and unless these could be removed, the benefits of exchange would, after all, be very limited.

§ 892. A man may have no commodity to give in exchange for what he wants. His only means of getting any thing is his labor. But he may not find employ in any occupation at which he could earn the highest wages. In this case, he would be obliged to work at all the different trades. To obtain clothes, he must labor for the tailor ; if he wanted shoes, he must labor for the shoemaker ; and so for all other necessities. But it may so happen, that, when some particular article is most wanted, the person having it to dispose of does not want the man's labor, nor any thing which he is able to get for his labor. Thus the poor laborer may remain for a long time in a state of suffering, before any means of relief shall have been devised.

§ 893. If every person were obliged to make an exchange of a part of his surplus products for every article he wants, he would be little better off than if he should attempt to make every thing for himself. The greater part of his time would be spent in making exchanges, if indeed they could be made at all.

§ 894. If a farmer wants a hat, he can easily exchange for it its value in wheat ; but the hatter may not want wheat ; he may however want a coat ; and the farmer must first exchange his wheat for the coat, and then the coat for a hat. But perhaps the tailor does not want wheat, but shoes ; and it may be that the shoemaker too wants something else which the farmer is equally unable to procure for his wheat. But suppose the tailor wants wheat, and the hatter a coat ;

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§ 891. How does exchange conduce to the happiness of mankind ?  
 § 892. What might a man be compelled to do who had nothing but labor to give in exchange for what he wanted ? § 893. What would be the disadvantage of every man's being obliged to exchange directly product for product ? § 894. Illustrate, by example, the difficulty of making

and suppose that the farmer procures the coat for the hatter. Here another difficulty arises: the coat is worth more than a hat. In this case, the hatter, having nothing but hats to give for the difference, the farmer must take more hats than he wants, and which he may find it equally difficult to exchange for something else that he needs.

§ 895. Now it is evident, that, if there were some commodity which a person could obtain for what he has to dispose of, and which commodity every other person would be willing to receive in exchange for his products, all this difficulty would be avoided. Hence, among nations in any degree civilized, there is something which, by common consent, has been adopted as a medium of exchange. In old times, things were in some countries valued according to the number of oxen which were given in exchange for them; in others, salt, leather, shells, and other things, have been used for the same purpose.

§ 896. Metals also, of various kinds, were, at an early period, adopted by different nations for the purpose of exchange. Iron was used by the Spartans, copper by the Romans, and, by other nations, gold and silver. Iron must have been very inconvenient, on account of its great bulk and weight. But all of them possessed this one advantage: they were capable of being divided into parts proportioned to the amount of value bought or sold, whether great or small. But as they were originally used in bars, without stamp or coinage, their use was attended with the inconvenience of weighing at every purchase. The fine metals, though much preferable for containing greater value in the same weight, were especially liable to this objection. So much value being contained in a very small particle of the metal, great accuracy in the division was necessary.

§ 897. Custom has decided in favor of gold and silver, called the precious metals, as the medium of exchange. Silver was used at a very early period, in the country of

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exchanges of article for article. § 895. How might these difficulties be avoided? What different articles have been used by nations as a circulating medium? § 896. What different metals have been used by different nations for the purpose of exchange? What conveniences and inconveniences attended the use of these metals, uncoined? § 897

Canaan. Abraham purchased the field of Machpelah for a burying place, with silver. It then passed by weight, as appears from Gen. 23 : 16. In later times, it became the practice among nations that used the metal currency, to fix upon it a stamp or inscription. The stamp answers two important purposes : First, it expresses the value of the piece, thereby saving the trouble of weighing it ; secondly, persons are less liable to be imposed on by adulterated and counterfeit coins. Before money was coined, the pieces of metal had to be assayed in order to ascertain the quality. The stamp of the government now placed upon the pieces, is evidence of the purity of the metal, as well as of its value. And though counterfeit stamps are sometimes put upon base coin, the cases are comparatively uncommon ; and the counterfeit coins may generally be detected by careful observation.

§ 898. The advantages of gold and silver as a circulating medium, are numerous. (1.) They may be divided into parts so minute as to admit of being exchanged for articles of very small value. (2.) They are uniform in quality in all parts of the world ; any quantity of the silver and gold of one country being of the same value as an equal quantity of the same metals of another country. And the quality is not altered by time or weather. (3.) They are not subject to the same degree of loss by wear as other metals. (4.) Their dearth renders a very small amount of weight sufficient to buy commodities of great value : it is therefore of easy transportation. (5.) They are capable of receiving the impression, by which their weight and purity are certified.

§ 899. But it may be asked, Wherein consists the necessity of employing both gold and silver in the use of money ? Why may not either the one or the other be dispensed with ? If silver only were used, the quantity necessary to represent a large amount of value, would contain too much weight

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What metals are now in general use as money ? Wherein consists the convenience of having the metals stamped or coined ? § 898. State the several advantages of gold and silver as a circulating medium. § 899. Why is not one of these kinds of metal sufficient ? Why is copper necessary ?

and bulk to be convenient in extensive commercial transactions. On the other hand, if gold alone were used in the capacity of money, being sixteen times as dear as silver, a piece of gold equal in value to the smallest silver coin, would be too small for ordinary use. For the same reason, a cheaper metal than even silver is necessary. The smallest silver coin in the United States, is a half dime, or five cent piece. A smaller piece of money in bulk would be inconvenient. Hence, to represent smaller value, copper is used.

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## CHAPTER XV.

### *Stundry Facts concerning Money.*

§ 900. ALTHOUGH in making exchanges value is given for value, it will be readily seen, that the value of the money employed in effecting the necessary exchanges in a community, is much less than the total value of the property to be exchanged. One reason is, that all exchanges are not made at the same time. A small sum, therefore, may answer as the medium of exchanging a large amount of property. This may be illustrated thus :

§ 901. A farmer sells to his neighbor wheat to the value of five dollars, and pays the money to the merchant for goods. The merchant buys a hat for the same money. The latter pays it to the tailor for making a coat. The tailor pays it to his journeyman for labor ; and the journeyman again pays the same money for merchant's goods. Thus we see, that commodities and labor to the value of thirty dollars have been exchanged with five dollars ; and the same five dollars, if kept in steady circulation a whole year, may be used to exchange values to the amount of a thousand dollars.

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§ 900. Why is not so great a value of money required to make the necessary exchanges in a community, as the value of property to be exchanged ? § 901. Illustrate this by an example. Another. § 902.

§ 902. Another reason why a small amount of money is sufficient for the purposes of exchange, is, that a large proportion, sometimes much the greater proportion, of the exchanges of property, is made *in kind*; that is, one kind of property is exchanged for another. One man may wish to dispose of his horse, and buy a pair of oxen; and if the owner of the oxen wants a horse, an exchange may be made without the use of money, except what may be necessary to pay the difference, in case the property exchanged should not be of equal value. Thus also a country merchant may exchange the greater part of his stock of goods for the productions of the country; and these he may again exchange with the city wholesale merchant for a new supply of goods, with a small amount of money.

§ 903. As in exchange value is always given for value, the whole business of the exchange of a community requires a quantity of money of a certain amount of value. For, if it requires ten dollars' worth of money to pay for ten dollars' worth of wheat, the greater the number and amount of exchanges there are to be made within a given period, the greater must be the value of the circulating medium to accomplish these exchanges.

§ 904. But the *quantity* of money and the *value* of money, are not the same thing: the quantity may be either greater or less at one time than another, when the value is neither increased nor diminished. The value of the money required for the purpose of conducting exchanges, be the quantity great or small, must always be in proportion to the total business of the national exchange. Suppose the circulation of the United States to be 60 millions of dollars at the present time; and that, by some circumstance or other, 20 millions should leave the country, or be otherwise withdrawn from circulation: if the business of national exchange should not be diminished, the 40 millions remaining in circulation, must possess the same value as the 60 millions do

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What other reason can you give, why a small amount of money answers the purpose of exchange? Explain this by two examples. § 903. When the value of the property to be exchanged is increased, is a greater value of money also required? § 904. Explain the difference between the *quantity* and the *value* of money. Give an example.

at present. And it is evident, that every four dollars must represent the same value as is now represented by six dollars.

§ 905. Now suppose that the quantity of money remain the same, and that the national products be diminished one third. As the amount of exchanges would, in this case, be one third less than before, and as the 60 millions would be used in the business of exchange, every six dollars would represent no greater value of property than four dollars do at the present time. If the present price of flour is four dollars, it would, in the case supposed, be six dollars; that is, every six dollars would represent as many barrels of flour as every four dollars do now.

§ 906. Hence we learn how to account for variations in prices. There are always circumstances arising, which affect either the amount of exchanges, or the quantity of the circulating medium. If both increase or diminish in the same proportion, prices will not change in consequence. But when, as above supposed, the quantity of money used for purposes of exchange is reduced, less must be given for products bought with it; and we therefore say, prices are fallen. On the other hand, when the amount of products to be sold is diminished, or the quantity of money is increased, more money is paid for the same products; and in this case we say, prices are risen.

§ 907. Hence we learn, also, the causes of the abundance and scarcity of money. Money may be said to be *abundant*, when there is more than enough to effect the necessary exchanges of the country; and *scarce*, when the quantity is insufficient for this purpose. When a nation buys more of other nations than it sells to them, it must pay the difference in money; and thus a part of the money having left the country, the amount remaining may not be sufficient for the purpose of exchange. And on the other hand, when a nation exports more than it imports, and re-

§ 905. Give another example, in which the products instead of the money are diminished. § 906. How do you account for the fluctuations in prices? § 907. When is money properly considered *scarce*, and when *abundant*? What will produce a scarcity, and what an abundance of money?

ceives the balance in money, there may be more than the business of exchange requires. In the former case money would be considered scarce; in the latter, abundant. But there may be other causes, than the importation and exportation of money, for its abundance and scarcity.

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## CHAPTER XVI.

### *The Nature and Utility of Banks.—Banks of Deposit and Exchange.*

§ 908. THE first institution of banks, it is said, was in Italy, where the Lombard Jews kept benches in the market places, for the exchange of money and bills; and *banco* being the Italian name for bench, banks took their title from this word. The first banks are supposed to have been only *banks of deposit*, places where persons deposited or laid up their money for safe keeping, to be ready when called for.

§ 909. But it may be asked of what use banks of this kind are; and whether a man's money may be kept in a bank more safely than when it is in his own keeping. Deposits of money in a hundred different places, would afford more frequent opportunities for robbery, than when made in one place. And nearly the same care and precaution would be necessary to secure one thousand dollars in each of the one hundred different places, as to secure one hundred thousand in a single place. Money may therefore be kept more safely, and perhaps more cheaply, by depositing it in a bank.

§ 910. But the utility of banks of this kind, consists, chiefly, in their being employed in the business of exchange. In this respect, they effect a great saving of labor. This is done upon the principle of a division of labor. In large

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§ 908. What kind of banks are the first said to have been? § 909. Of what benefit are banks as institutions of deposit? § 910. How

commercial towns, great sums of money must, of necessity, pass from one merchant to another. And the time and labor necessary to count out all these large sums of money, and to transport them from one place to another, would be very great. But much of this time and this labor may be saved, by each one's depositing his money in a bank, and by their uniting in employing a banker. And whenever any one of them having money in the bank, wishes to pay another, he may give him an order or check upon the banker for the amount to be paid.

§ 911. But it is obvious, that, if money must be counted out on the presentation of every order or check, a large number of persons must be employed for the purpose; and the expense of making exchanges would still be very great. But the banker may effect the saving of much time and labor, by keeping an account with every person making deposits in the bank. If one of the customers of the bank, has occasion to pay to another one thousand dollars, he may give his creditor an order on the banker for this amount. But the creditor may not want the money for immediate use; he therefore chooses to let it remain in the bank, until he may have occasion for it. In this case, the labor of counting the money, which may consist of many hundred pieces, may be saved, by simply charging one thousand dollars to the drawer of the order, and crediting him to whom it is given with the same amount.

§ 912. Now if we consider that most of the merchants conduct their moneyed transactions with each other through banks, we shall readily perceive the amount of time and labor saved by means of banking to be immense. For it may be that the person, in the case above supposed, to whom the one thousand dollars stands credited, may wish to pay the same, or nearly the same sum, to another creditor of the bank, and this third creditor to a fourth; and in the same manner a thousand dollars may, in effect, be transferred an indefinite number of times from one creditor of the bank to another, by a few moments' labor in writing.

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are they useful in the business of exchange? § 911. How may much of the time and labor of counting money be saved? § 912. How often may a certain sum of money in a bank pay a debt without being



§ 913. Banks are useful in remitting payments to distant places. The transportation of large sums in specie from one part of the country to another would be expensive ; and it would also expose persons to the danger of robbery. But the expense and risk of thus conveying money through the country, may be avoided by the agency of banks. Consider for a moment the vast amount of trade between the large cities on the Atlantic, and the other parts of the United States ; and it will at once appear, how convenient banks are to merchants and other persons who are obliged to send money to distant places.

§ 914. But let us see how the operation of transmitting money by means of banks is performed. A merchant in New Orleans, wishing to pay his creditor in New York ten thousand dollars, deposits the money in a bank, takes from the cashier a draft for that amount on the cashier of a bank in New York, and sends the draft by mail to his creditor there, who presents the draft, and receives the money ; and the cashier charges the amount to the bank in New Orleans. Thus the payment of a large sum is made, without the expense to the debtor of carrying it himself, or the risk of intrusting so much money to strangers to be carried.

§ 915. It may here be asked, how the bank in New Orleans avoids the expense and risk of sending the money to New York. Now we must remember that, although merchants in New Orleans buy many goods in New York, merchants in the latter place receive large quantities of cotton, sugar, and molasses from the former ; and many remittances are to be made from persons in New York through the banks there, to persons in New Orleans. The banks, then, in both places keep accounts with each other, and, at stated times, settle their accounts, when, perhaps, the balance due to either will be very small ; and the transportation of but little money will be required.

§ 916. Thus payments may be made from one country

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counted ? § 913. What is the advantage of remitting payments through the medium of banks ? § 914. Describe the manner in which remittances are made through banks ? § 915. By what means is the transportation of money by the banks from place to place saved ? § 916. What is the order called, which requests the payment

to another. The orders requesting such payments, are called bills of exchange. A *bill of exchange* is an order drawn on a person requesting him to pay to some person designated by the drawer. The nature and effect of a bill of exchange we have briefly described in another place. (§ 676.) But as bills of exchange are at present so extensively used in commercial transactions, a more particular description of their use as the representatives of money, properly belongs to this place.

§ 917. We have seen how the moneyed transactions between different parts of the same country may be facilitated by the transmission of orders or drafts, instead of money. The conveniences of this system, in conducting these transactions between persons in different countries, are equally great. For, besides the difficulties that attend the transportation of money from place to place in the same country, its transportation to foreign countries is attended with the additional danger of loss by shipwreck.

§ 918. A, residing in New York, and owing B in London ten thousand dollars, may make a remittance of that amount in this manner: C, also residing in New York, may have ten thousand dollars due him in London, being the avails of produce sent from this country and sold there. A, wishing to avoid the expense and risk of sending the money across the Atlantic, pays ten thousand dollars to C, and takes his order on the banker in London, with whom the money is deposited, for the same amount, to be paid to B.

§ 919. These bills may be made to perform the office of money. A, going from New York to London to buy goods, wants ten thousand dollars. B, also residing in New York, has ten thousand dollars owing to him in London, payable in six months; and, preferring to receive payment at home, he draws an order on his debtor in London, to be paid in six months from date, for which A gives his obligation to B, payable at the same time. A proceeds with his bill of exchange to London, where, the responsibility of the drawee

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of money in another country? § 917. What is the advantage of this mode of making payments to foreign countries as from place to place in the same country? § 918. Show, by example, the manner of making a remittance abroad. § 919. How may a foreign bill of exchange

being known, the bill is received by the London merchant for goods, who again disposes of it in a similar manner; and thus it may continue to pass as money until it becomes due, when it is paid to the holder.

§ 920. Hence, in all commercial places carrying on a foreign trade, bills of exchange are articles of purchase and sale. Being always in demand for the purpose of making remittances abroad, a person having money due in a foreign country, may obtain for a bill of exchange more than the amount for which it is drawn. The demand for bills of exchange in any place, is created by its having bought more in a foreign place than it has sent thither. In such case, bills are wanted to make payments.

§ 921. We sometimes hear it remarked, that exchange is *in favor* of a certain country. It is said to be so, when less money is given in any country for a bill of exchange, than such bill will produce in the country on which it is drawn. If, therefore, a bill of exchange, drawn in the United States on a person in England for ten thousand dollars, could be sold here for more than that amount, to a person who might be under the necessity of making a remittance to England, exchange would be said to be in favor of that country.

## CHAPTER XVII.

### *Banks for Discounting Bills and Notes, or for Loaning Money.*

§ 922. ANOTHER kind of banks are *banks of discount*, or *loan*. Banks of this kind are institutions for loaning money. They are called banks of discount, because it is the practice at banks, when money is advanced on bills of exchange and promissory notes, to retain the interest instead of re-

be made to circulate as money? § 920. What makes bills of exchange articles of purchase and sale, in a commercial place? § 921. In what case is exchange said to be in favor of any country?

§ 922. What is a *bank of discount*? Why is it so called? § 923.

ceiving it with the principal when the bill or note becomes due.

§ 923. In discounting a bill or note, the interest on the whole sum to the time of payment, is not deducted. The lender would, in this case, get more interest than he would be entitled to receive. The interest on one thousand dollars for six months, at seven per cent., is thirty-five dollars. But a bank would not deduct that amount; because, for thirty-five dollars the borrower ought to have the use of one thousand dollars for six months, whereas he would receive but nine hundred and sixty-five dollars. He ought to have such sum as would in six months amount to one thousand dollars; that sum is nine hundred and sixty-six dollars, and nineteen cents.

§ 924. But it may be inquired, why persons having money to lend, do not attend to the business, each one for himself, instead of associating themselves for the purpose. By uniting the money of fifty or a hundred persons, and employing the necessary number of persons to transact the business, much time is saved. Neither would have steady employment in lending and collecting his own money. It is cheaper for each to pay his proportion of the expense of hiring one or more persons to loan and collect the money of the whole, and to divide the profits or interest among them.

§ 925. Banks for loaning money are a great convenience to the community. A merchant may wish to purchase a quantity of country produce, but he has not on hand the necessary funds. And if there were no banks, he must find some private individual who lends money; which may cost him not a little time and trouble; and when such individual is found, he may not have the money on hand, or not enough to afford the accommodation desired. But every man knows where to find banks; the merchant therefore goes directly to a bank, which is generally able and ready to serve its customers; he obtains the loan; he makes the intended purchase; and thus he has not only been accom-

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Is the interest on the full amount of a note deducted from it when it is discounted? Why not? § 924. Why do persons usually associate for banking purposes? § 925, 926. State the general advantage of banks of loan to a community, in the purchase and sale of produce. Why is it better to borrow money in small quantities as it is wanted?

modated himself, but the farmers around him have profited by the ready sale of their produce.

§ 926. In this manner, the merchant-millers or manufacturers of flour, are furnished with means to purchase their supplies of wheat. It is not to be presumed that they have the ready money to buy all the wheat in the country. Nor can they calculate beforehand, how much will be offered in the market, or how much it will be expedient or safe to purchase. It is therefore better economy to get money in sums as it may be needed, than to provide a large capital in the beginning, a great part of which may not be wanted, or may remain on hand, for a long time, idle and unproductive. By the accommodations which banks afford, persons may get as much or as little money as they may want from time to time, and on a credit sufficiently long to enable them to refund the same from the sales of their products.

§ 927. Banks are useful, also, in enabling persons destitute of capital to commence business. A young man of enterprise, does not wish to labor always as a clerk or journeyman; and if he can obtain money to "set up business" for himself, although he may begin on a small scale, he may, by prudent management, soon repay the capital borrowed, and go on independently and prosperously. Many young men, who would otherwise have remained poor, have been enabled, in this way, to become rich, and to set on foot, and carry into execution important enterprises which have given a stimulus to industry, and contributed much to the prosperity of a whole community.

§ 928. Banks bring into active and profitable use, much money which, without such institutions, would be unemployed. There are many persons who have no immediate use for the gains of their labor. The surplus earnings of an industrious master mechanic, or even an economical laborer by the day or month, may, in a few years, amount to a considerable sum, which he may put in a bank, where it will yield a sure and steady income to the owner; and, by being loaned to men of enterprise, it increases the productive industry of the country.

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§ 927. Show the advantage of banks to persons destitute of capital, wishing to commence business. § 928. State the advantages of banks

§ 929. Thus we have seen the nature, and some of the benefits of banks, as institutions for deposit and exchange, and for loaning money. And we have considered them separately as distinct institutions. But if we consider the business of both these kinds of banking institutions united in the same bank, we shall readily see how much more useful they may be rendered. Hence, at the present day, there are no banks of deposit and exchange, as such; but all banks transacting business of this kind, connect with it the business of loaning money, by discounting bills of exchange and promissory notes. In the next chapter, a more particular notice will be taken of the character and operations of the banking system in this country.

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## CHAPTER XVIII.

### *Banks of Deposit, Discount, and Circulation, and of Paper-Money.*

§ 930. THOSE who are in any degree conversant with banks and banking operations, will have perceived from what has been said of banks, that banks in this country differ essentially from those which have been noticed in the two preceding chapters; for here, as is well known, the banks furnish the principal part of the money or circulating medium. They receive money in deposit, and they discount notes, or loan money; but when they discount a note or bill, instead of paying gold and silver coin for such note, they pay in notes of their own, for which they are bound to pay the specie whenever demanded; and these bank-notes circulate as money. Hence they are banks of deposit, discount, and circulation; called more frequently,

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as depositories of the surplus earnings of laborers. § 929. Is the business of deposit and exchange, and of discounting or loaning, done at present by distinct or separate institutions?

§ 930. In what respect do banks in this country differ from those

perhaps, banks of discount and circulation, or of loan and issue. As banks perform an important part in the economy of this country, it is proper in this place to describe the manner in which these institutions are established and conducted.

§ 931. Banking companies are incorporated by acts of the legislature. The nature of a corporation has been defined in another place. (§ 7.) When a bank is wanted in any place, a number of persons petition the legislature of the state to be incorporated for banking purposes. The act grants and defines the powers of the corporation, and mentions the number of years for which it is to exist, and the amount of capital on which it is to do business.

§ 932. The manner in which the capital of the bank is obtained, is as follows: Suppose the capital of a bank is to be \$100,000. This sum is divided into portions or shares, usually of one hundred dollars each. The commissioners named in the act of incorporation, give notice that, at a certain time and place, books will be opened to receive subscriptions to the stock of the bank. Persons wishing to furnish any part of the capital of the bank, attend at the appointed time and place, and subscribe for the number of shares they will respectively take. The owners of these shares are called *stockholders*, who elect from among themselves a certain number of directors, usually thirteen; and these choose from their own number a president. The president and directors choose, (not necessarily from their own number,) a cashier and clerks. The money which is to constitute the capital or stock of the bank being all paid in, the bank is ready to do business.

§ 933. A person who wants to draw money at the bank, draws a note for the amount he wishes to borrow, payable to the bank in two, three, or four months, according to the practice of the bank, which note is signed by himself, and by one or more other persons as sureties, who are usually called *endorsers*, and who are bound to pay the debt in case of the failure of the borrower. If the note is deemed good,

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we have described? § 931. How are bank charters usually obtained? § 932. Describe the manner in which the capital of a bank is raised. What are its officers, and how chosen? § 933. How is a note drawn

the cashier of the bank *discounts* it; the money advanced thereon consisting of notes of the bank.

§ 934. Banks may issue bills to a greater amount than their capital stock; the amount is fixed by law, and is once and a half, twice, or even three times the amount of the capital. This renders banking, when prudently managed, a profitable business, as the stockholders receive interest on a much greater amount of money than they have invested. Every six months the profits are divided among the stockholders. The sums thus divided are called *dividends*.

§ 935. But if banks may issue their notes, or bills, as they are usually called, to an amount so much greater than the amount of their capital, what guaranty, it may be asked, has the community of the ability of banks to redeem their bills? that is, to pay them when payment is demanded. Whatever may be the amount of the issues of a bank, it must, of course, have in its possession the notes of its customers to an equal amount, and even greater; for it has also the amount of the *interest*, which it has retained out of the money advanced on such notes. Every well conducted bank, therefore, has the means of ultimately redeeming all its bills, aside from its capital. So that, if the stockholders are honest men, the holders of bills are exposed to little or no loss, and to no other inconvenience than that of being obliged to await the collection by the bank of the notes of its customers.

§ 936. Whenever a bank is unable to pay the specie on all the bills it has issued, it is said to have failed, or to be broken. But this may happen, and yet the bank may be solvent; that is, it may be able to pay all it owes. But it is not probable that a great proportion of the notes of any bank will be presented for payment at once; and if unusual demands should at any time be made upon it for specie, it may cease to make any farther issues of its notes; and from its daily collections of the notes of its customers which are

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which is to be discounted? Who are called endorsers? § 934. To what amount may banks issue their notes or bills? What are *dividends*? § 935. What guaranty has the community that the bills of banks will be redeemed? § 936. When is a bank said to have failed? Is a failure necessarily an insolvency? Why is a bank generally safe



constantly falling due, together with its capital on hand, it may meet all the demands that, in almost any supposable contingency, may be made upon it.

§ 937. But wherein consist the advantages of paper-money? In the first place, it is more convenient than specie. It is much more easily counted, because a large portion of the amount of the paper-money in circulation is in notes of large denominations. It is also much lighter and less bulky: several thousand dollars of this kind of money may usually be carried in a man's pocket. And when it is lost or stolen, it may be more easily identified and recovered. Thus we see that it is more convenient as a medium of exchange than gold and silver; and so long as it is convertible into specie, it will in most cases be preferred.

§ 938. Another advantage of the employment of paper-money, is its superior cheapness, as an instrument of exchange. If paper may be substituted for one half or three fourths of the amount of money necessary for the business of the national exchanges, such proportion of the amount of specie formerly used for this purpose, may be applied to some other profitable use; and so much may be said to have been added to the productive capital of the nation.

§ 939. But it is obvious, that some precaution on the part of the government is necessary, to guard the community against losses by fraudulent banking companies. In some states, the property, personal and real, of the stockholders, is pledged for the redemption of the notes of the banks, while in others, the property of the corporation only, as such, can be taken for the debts of the bank. The principal security which the public has against loss by banks of the latter kind, is the honesty of those who manage them, and the power of the proper authority in the state, to take the management into its own hands, and to apply the effects to the payment of the bill-holders, upon due evidence being given that banks are ill conducted.

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in issuing bills to a greater amount than its capital? § 937. Why is paper-money more convenient than gold and silver coin? § 938. Why is it cheaper as an instrument of exchange? § 939. What provision is made, in some states, for securing the redemption of bills by the

§ 940. In the state of New York, a law was enacted in 1830, by which a fund, called a *safety fund*, is provided, to indemnify the holders of bills against losses by the failure of banks. This fund is raised by collecting from the banks a yearly tax of one half of one per cent. on their capital stock, until such fund shall have amounted to three per cent.; and the law provides, that, whenever this fund shall have become exhausted in the payment of the debts of broken banks, taxation shall again be resorted to in order to replenish it.

§ 941. In 1838, a general banking law was enacted in the same state, which not only secures the holders of bills against loss, but it has in view, at the same time, the additional object of extending the privileges of banking to all who wish to engage in the business. By complying with the provisions of this law, any person or persons may establish a bank, without application to the legislature for a special law granting the privilege.

§ 942. Several benefits are anticipated from this law. The privilege of banking being free to all, more capital will be brought into active employment, and, consequently, the productive industry of the country will be increased. Again, it is presumed, that, there being more money to be loaned, usurers will have less frequent opportunities of extorting oppressive rates of interest from those who are obliged to borrow.

§ 943. At least one half of the capital of a bank established under this law, must consist of state stock, or public debt, that is to say, debt against the state; which is to be purchased, and transferred to the comptroller of the state. The remainder of the capital may consist of bonds and mortgages on real estate, which is to be taken at half of its estimated value, exclusive of the buildings thereon. The public debt must produce, or be made equal to five per cent. a year; and the bonds and mortgages must draw at least six per cent. a year.

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banks? § 940. How is security provided by the safety fund act of New York? § 941. What are the objects of the general banking law of New York? When was it enacted? § 942. What benefits does this law propose? § 943. How is the capital of these banks

§ 944. The notes to be issued by these banks, are to be furnished in blank by the comptroller, so engraved as to guard against counterfeiting, and countersigned by him or some other person duly authorized. But the comptroller may not furnish any bank with a greater amount of such blank notes or bills than the security pledged in public stock, or in public stock and real estate. The plates on which the bills are printed, are to remain in the custody of the comptroller. And these banks are required to have on hand at least twelve and a half per cent. in specie of the amount of their notes in circulation.

§ 945. The owners or assignors of the securities pledged, may receive the interest on them, unless default shall be made in the payment of their bills. But if the banks fail to redeem their bills, the comptroller disposes of the securities, and pays the holders of the bills, who are, in such case, entitled to receive for damages fourteen per cent., instead of the legal interest, from the time of the refusal of payment. Thus we perceive, that this law affords security to the community against those losses which are often suffered from the fraudulent failure of banking companies, which has always been deemed one of the principal disadvantages of banks.

§ 946. There is, however, one disadvantage attending a paper currency, against which no remedy is provided, viz. the *fluctuation* in the value of the circulating medium. The effect of an abundance and scarcity of money in changing its value, has been noticed. This fluctuation is frequently produced, to a greater or less extent, by sudden withdrawals and over issues of bank paper. This inconvenience, however, is considered unimportant, compared to the advantages of a paper currency. Hence we find, that, in all commercial and prosperous countries, paper-money constitutes the greater portion of the circulating medium. Its value is considered equal to that of gold and silver, as a currency, because the

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constituted? § 944. What provision is made for the protection of the community against losses from their failure? § 945. How are holders of bills compensated for damages sustained by the failure of these banks? § 946. What are the disadvantages of banks and a paper currency?



banks are bound to redeem their notes with specie on demand; and it is generally preferred to specie, on account of its convenience.

## CHAPTER XIX.

### *Distribution.—Wages, or the Price paid for Labor.*

§ 947. It has already been stated, that wealth, or the value of products, is created by the union of capital and labor; and also, that products are, in general, the result of the industry and capital of different persons. The avails of the land of a farmer may be produced by the labor of other men. A master-shoemaker may have all his work performed by journeymen. But the proceeds of the sales of the grain and the shoes, do not all go to the farmer and master mechanic, nor to those who have performed the labor. As neither the capital nor labor alone would have produced any thing, it is evident, that the avails are to be divided among the capitalists and laborers.

§ 948. The division of the profits of the industry and capital employed in production, and the principles by which this division is regulated, are called *distribution*, or the *distribution of wealth*. Sometimes a laborer lends his industry to a person who has capital only. The price of the labor, in this case, is called *wages*. Another may loan his capital to one who has industry. The price paid for the use of the capital, when it consists of money, is called *interest*: when it consists of land, buildings, machinery, &c. it is usually called *rent*.

§ 949. The price of labor is affected by several circumstances. Labor will be high or low, according to the pro-

§ 947. How is wealth created? Among whom are the profits of capital and labor divided? § 948. What do you understand by distribution? What are wages? Interest? Rent? § 949. What effect has the abundance of capital upon labor? What is the effect of a

portions which capital and labor bear to each other. When capital is abundant, there is usually a demand for labor, and then the price of labor rises. When, from any cause, the number of laborers in any community has been diminished, while the capital remains the same, capitalists will overbid each other for workmen, and the price of wages will be raised. But if the capital should be diminished, and the number of laborers continue the same; or if the population of a country should increase more rapidly than its capital, the price of labor would gradually fall, unless kept up by some special counteracting cause.

§ 950. A man who invests a capital of ten thousand dollars in any business, must necessarily employ a greater number of laborers than one who has but half that amount invested in the same business; and he is capable of rendering a greater benefit to the community, by furnishing the means of support to a greater number of persons. Therefore, the greater the amount of capital there is in a country, the more labor will be required.

§ 951. Hence we find, that a country increases in population, in proportion as it increases in wealth. Where capital is abundant, the means of living are easily obtained; and where the comforts of life are abundantly enjoyed, a greater number of children will be reared, as observation infallibly proves; and a greater number of laborers also will emigrate to such a place from other countries, where the price of labor is lower, and the means of living are less easily acquired. And if the supply of labor thus furnished increase more rapidly than the capital of the country, the price of labor will gradually be reduced.

§ 952. Wages are affected by the danger, fatigue, or disagreeableness of the labor to be performed. If the performance of any kind of labor be easy and pleasant, many will desire to engage in it; and wages in this employment will be low. On the other hand, if labor in any business be performed with difficulty, or if it be in its nature un-

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diminution of capital? § 950. Why is a rich man capable of rendering a greater benefit to community than a poor man? § 951. What effect has the increase or the abundance of capital upon the population of a country? § 952. What effect has the disagreeableness of any

pleasant and disagreeable, a supply of labor will not be obtained without the offer of higher wages.

§ 953. The regularity or irregularity of the occupation of the laborer also affects the price of labor. If a man's trade does not give him constant employment, he must receive more for an hour's labor, than he whose occupation demands incessant labor. Thus a trader, who performs but one or two operations during the day, though but an hour's time may be occupied in their performance, must receive a profit at least equal to the interest on his capital for a whole day, and the ordinary price of labor for the same time. A physician or a lawyer charges for attending to a single call, as much as is charged for a day's labor in other occupations; because his services may not be again wanted during the day.

§ 954. Wages are generally in proportion to the skill of the laborer. The highest degree of skill, whether acquired by a long course of practice, or whether it is the result of a peculiar aptitude for a particular kind of business, is possessed by a small proportion of laborers. And those who possess this skill, will be enabled to obtain higher wages than are paid for ordinary labor.

§ 955. So also persons to whom responsible trusts are committed, command higher wages than others. The business of a master-agent, for example, often requires extraordinary qualifications. To secure the confidence of his employer, he must possess moral character, prudence, and what is commonly termed, a "natural talent" for business. And as few persons singly possess all these qualifications, these few will ask for their labor a higher price than is paid for labor which can be performed by a greater portion of laborers.

§ 956. The price of labor is often determined by the degree of profit which a particular kind of business affords. When any business becomes profitable, more capital will be

kind of labor upon the wages of labor? § 953. Show by example the effect of the inconstancy of an occupation upon the price of labor. § 954. Why does a skilful laborer receive higher wages than an unskilful one? § 955. Why do persons of good character and of good abilities, command higher wages than those of the opposite character? § 956. Why does the profitableness of any business raise the price of

invested in it, and the price of labor employed in it will rise. Competition, however, among the capitalists, will soon reduce the profits of their business, and labor in that employment will, after a little time, be no better paid than in others.

§ 957. Labor is of two kinds : simple labor and educated labor. *Simple labor* is that which may be performed by any person of sufficient strength, without any considerable previous education or training. The price of simple labor is governed by several circumstances. A laborer must be able, from his earnings, to supply himself with the necessities of life. For less than this, it is not expected that any one would be willing to labor.

§ 958. But this is not all. The wages of a laborer should be sufficient to enable him, besides supplying his own wants, to support his family, and such other persons as are dependent on his labor for the means of subsistence ; and also to lay up something to support him, when, from sickness or old age, he shall have become unable to labor ; else he must, in that event, either starve, or he must be supported either by individual or by public charity.

§ 959. In a warm climate, less fuel and clothing are required than in a cold one. A person can therefore support himself with lower wages in the former than in the latter, other things being equal. The less the expense of living, the lower will naturally be the price of labor ; for where there is competition in labor, its tendency always is to reduce the price of labor to the lowest point at which it can procure the conveniences of life.

§ 960. By *educated labor* is meant that labor which requires considerable previous preparation or training in order to accomplish it. A tailor, or blacksmith, receives higher wages than an ordinary laborer by the day or month. Having served several years as an apprentice to the trade at which he labors, he is entitled to compensation for the time

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labor ? By what means are wages again reduced ? § 957. What is simple labor ? What is the least compensation which any laborer ought to receive ? § 958. What more is it proper that he should receive ? § 959. How does living in warm climates affect the price of labor ? § 960. What is educated labor ? Why should it be better,

spent in acquiring the skill necessary to the due performance of the labor.

§ 961. Such is the labor of lawyers, physicians, and clergymen, whose wages are such as to compensate them for the expenditure of money, as well as time, in acquiring the qualifications indispensable to their several callings. If labor of this description did not receive an adequate reward, persons would be little disposed to qualify themselves for the learned professions.

## CHAPTER XX.

### *Interest, or the Price paid for the Use of Capital.—Rent of Land.*

§ 962. WE are next to speak of the profits of capital. If a man lends his capital to another, he is entitled to something for the use of it; because, first, had he not loaned it, he might have united his own labor with it, and thus have derived from it a profit greater than would have accrued from his own simple labor, disconnected from capital; secondly, because the borrower, having expended neither time nor previous labor in acquiring the capital, can afford, and ought to pay, something for the use of that which has cost another a great amount of labor, and which renders his own industry more productive.

§ 963. In all cases, therefore, the owner of capital employed in production, is entitled to a share of the profits arising from its employment. If he has used it himself, he of course receives the whole profit of the capital and industry united; but if the labor of another person has been exerted upon it, the profits are divided among the capitalists and laborers.

rewarded? § 961. What kind of labor is that of lawyers, physicians, and clergymen?

§ 962. Why is a man entitled to a compensation for the loan of capital? § 963. In what cases does he receive the whole profits of his



§ 964. The division of the profits of capital and labor, varies according to the nature of the agreement between the parties. A coach-manufacturer, for example, possesses all the capital necessary for the prosecution of his business; but he employs other persons to perform the labor. In this case the capitalist assumes all the risk, and pays to the laborers stipulated wages, retaining to himself all that remains of the profits of the business.

§ 965. But the owner of the capital may choose to loan his shop and tools to the laborers, the latter taking the risk of the business. In this case, and in similar instances, in which the risk devolves upon the borrower, a specific sum is generally paid to the capitalist, and the remainder of the profits is taken by those who perform the labor.

§ 966. There are other conditions still, on which capital and industry are united, and which require a different distribution of the profits. One individual may furnish the capital, and another the labor and skill, each assuming a portion of the risk attending the enterprise. The union thus formed is called a copartnership; and the profits of the business are usually shared by the parties, either equally, or in such other proportions as have been previously agreed on. Or, each may furnish a portion of both the capital and labor, and share in the risks and profits of the business.

§ 967. The rate of interest is varied by circumstances. If, with the labor bestowed upon capital, it should yield a revenue no greater than the same labor would produce without capital, the borrower could afford to pay no interest for the use of it. If it should produce a revenue equal to double the cost of the labor bestowed, he could afford to pay for the use of the capital a price nearly equal to one half of the value produced. We say *nearly* equal; for it should be remembered, that every kind of business in which capital is employed, is attended with some degree of risk; and the borrower, if he be an economist, will calculate for

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capital? § 964, 965. Illustrate, by an example, how the distribution of profits is varied by the agreement between parties. § 966. How are partnerships usually formed? By what rule are the profits of partnerships divided? § 967. Why ought not a person to pay as interest for the use of capital, all it produces over and above the bare

losses from careless workmen, unavoidable accidents, and other causes.

§ 968. In loaning his capital, a man is governed by various considerations. If he can, with his own labor, make it produce fifteen or twenty per cent., he will ask a higher interest than when it would yield but half that per centage. Thus, in proportion to the productiveness of capital, will generally be the interest charged for the use of it. If, however, he do not possess the knowledge and skill necessary to give the most profitable employment to his capital, he will be more likely to loan it to others at a lower rate of interest, than if he had the requisite skill and experience to manage his capital to advantage.

§ 969. The rate of interest is affected by risk, or uncertainty. A person loaning his capital for a definite period, makes arrangements for its reinvestment at the expiration of the term for which it was loaned; and if it be not punctually paid, the lender will be liable to loss or embarrassment. These risks and supposable contingencies, must therefore be taken into account by every person who loans his capital.

§ 970. But there is danger that capital lent will never be returned. The borrower may be dishonest; or, if honest, he may be destitute of the skill necessary to employ the capital profitably, and hence he may become unable to refund the same. In providing against these probable losses, the lender will charge a higher rate of interest than he would demand in case the investment were safe beyond the possibility of loss. This may in part account for the fact, that the government usually pays a lower rate of interest than is paid by individuals. Capitalists have the fullest confidence in the public credit, in this country.

§ 971. The time for which money is loaned has some effect in determining the rate of interest. When money is lent for short or indefinite periods, a higher interest is charg

cost of his labor? § 968. Why does a man charge a higher rate of interest when the profits of capital are great? § 969. Why should the circumstance of risk or uncertainty affect the rate of interest? § 970. Why should the danger of the insolvency of a borrower affect the rate of interest? § 971. Why is the rate of interest affected by

ed than when it is lent for long periods. When money is often returned to the lender, it will frequently remain on hand for a long time before an opportunity offers for reloaning it; during which time it yields no interest. If the time for which the money is lent is indefinite as well as short, the liability to loss is still greater, as the money may be returned unexpectedly to the lender, when he is unprepared for making a profitable reinvestment.

§ 972. We have spoken above of interest on capital, and interest on money, indiscriminately. Although the term interest is generally used to signify the price paid for the use of money, it is with equal, perhaps greater propriety, applied to other capital; for we borrow money for the purpose of procuring with it the capital which we desire: and the use of the money, strictly speaking, ends when the purchase of the capital is completed.

§ 973. *Rent*, or the price of the use of land, is regulated by the same principles as interest; regard being had to its power of production. For an acre of land which produces forty bushels of wheat, a person can afford to pay double the rent that is paid for an acre which yields but twenty bushels. More than this; for the cost of cultivation is the same in both cases.

§ 974. The relative value of productive and unproductive land, may be thus illustrated: Suppose the quantity of wheat produced to be as above supposed, and to be sold for one dollar a bushel; the value of the product of the one acre will be forty dollars, and the value of that of the other will be twenty dollars. If we deduct from each ten dollars for the cost of production and sale of the product, the value remaining of the proceeds of the one acre will be thirty dollars, and of the other, ten dollars. Now, if five dollars were paid for the use of the unproductive, and ten dollars for the use of the productive acre, the nett profits of the latter will still be four times as great as the profits of the former.

§ 975. The price of land depends essentially upon its

the period of time for which capital is lent? § 972. What is the difference between the interest of money and the interest of capital? § 973. By what principle is the rent of land regulated? § 974. Illustrate, by example, the relative value of productive and unproductive

situation. Land in the neighborhood of a market is more valuable than land of equal fertility lying at a greater distance from the market; because, in the latter case, a considerable portion of the value of products is consumed in transportation. Hence, land of inferior quality in one place, may be of greater value than land of superior fertility in another. The disadvantages of situation, however, are often removed by the construction of canals, rail-roads, and other improvements of internal communication; and lands are thus frequently raised to two or three times their former value.

§ 976. We see from what has been said, what circumstances enter into the computation, in estimating the value of land. There must be taken into account the several items of the cost of production, embracing the cost of the labor of the master-farmer and others employed in tillage and securing the crop, the cost of seed, and the expense of transportation. These may ordinarily be estimated with sufficient accuracy, to enable a person to determine how much he can afford to pay for the use of land.

§ 977. The principle of distribution may be exemplified in the case of a manufactured product. The aggregate cost of a coat includes these several items: the cost of the wool from which the garment is made; the labor of the master-manufacturer, the interest on his capital, and the wear of his machinery; the labor of the spinner, weaver, dyer, and dresser of the cloth, and the cost of the dying materials; the additional charge of the manufacturer for risks and losses; the labor and skill of the merchant, with interest on his capital; and lastly, the labor of the tailor. Thus the price of the coat is distributed among these several producers.

§ 978. For aught that has been said, it may be supposed that every man has a right to loan his capital for what another is willing to pay. But such is the law, that capital, consisting of any thing else than money, may be thus loan-

land § 975. How does the situation of land affect its price? How may the disadvantage of situation be removed? § 976. What are the principal circumstances to be taken into account in estimating the price of land? § 977. Illustrate the principle of distribution in the case of a manufactured product. § 978. May a person receive for

ed; but in loaning money, the lender is restricted to a certain rate of interest.

§ 979. Many are of the opinion, that this law unjustly interferes with the right of property, and is in its operation injurious to the community. Why should money be the subject of such a regulation, when every other species of capital or property is exempt from it? When land is productive, and its products are dear, a high price may be taken for the use of it; and if no person will pay the rent asked, the owner may occupy it himself.

§ 980. When money may be so invested as to yield a higher than ordinary profit, the borrower can afford to pay a corresponding price for it. But if the law forbid his receiving for it what it is worth, he will choose to invest it himself where it will produce such revenue. Thus he is compelled to enter into a business for which he has no inclination, and the other is obliged to forego the privilege of engaging in what may be to him a profitable and agreeable undertaking. But it is often the case, that, rather than relinquish a promising or favorite project, a price is offered for money sufficiently high to induce the lender to risk the consequences of a violation of the law, or to devise some dishonorable means of evading its penalty.

§ 981. Whatever may be the tendency and operation of this law, it has in view the worthy object of preventing men from oppressing the poor and necessitous, by extorting from them ruinous rates of interest. And public sentiment in this and other civilized nations has hitherto sanctioned this law. The propriety of a law fixing the rate of interest to be paid in cases in which there is no previous agreement between parties, is admitted by all.

the use of money whatever another is willing to pay? § 979. Why should a distinction be made between money and other property? § 980. What reasons may be given against this distinction? § 981. How extensively do usury laws prevail? Can you tell what are the probable good effects that would result from the repeal of these laws?

## CHAPTER XXI.

*Consumption.—Individual Consumption.*

§ 982. By *consumption* is meant the destruction of value; and this destruction of value or utility of a product, is effected by appropriating it to the use for which it is intended. The production of wealth, we have defined to be the creation of value, or the investing of any substance with utility; that is, with the capability of gratifying our desires, or of satisfying our wants. Consumption, on the contrary, is the destruction of this utility, which is effected by appropriating it to its intended use, or by accident. A person may destroy the value of a garment by wearing it, or it may accidentally fall into the fire, and be burned. In either case, the garment is consumed; that is, its value is destroyed.

§ 983. Production consists, not in the creation of matter, but in giving it value, or in so changing its form as to invest it with utility; consumption is the subtracting from a product its value or utility; that is, its capability of satisfying our wants. All products are created for the purpose of use or consumption, and, sooner or later, they will be consumed.

§ 984. Consumption may be considered to be of two kinds, *individual* and *national*. As many things relating to the subject of consumption, have necessarily been remarked, incidentally, in the other divisions of this treatise, we shall embrace what remains to be said on this division, in two chapters; one of which will be devoted to each of the two kinds of consumption above mentioned; and our remarks will relate chiefly to the principles by which consumption is regulated.

§ 985. *Individual consumption* is always designed either to effect the reproduction of value, or to gratify the desires or satisfy the wants of individuals. And no value can be produced without the destruction of some other value previously created. Thus the value of wool, as such, is consumed in the production of a piece of cloth. And the

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§ 982, 983. What is understood by consumption? How is the value of a product destroyed? § 985. What is *individual* consump-

farmer, in producing the various agricultural products, must consume a portion of his previously acquired capital, consisting of seed, wages of labor, provender for working animals, wear and tear of the implements of husbandry, &c.

§ 986. In a former part of this essay, we have seen that a union of capital and labor is essential to production ; which is, in effect, the consumption of one value for the production of another value : and this consumption is of capital and labor. As no valuable product is created but by the destruction of previously existing values, in other words, the consumption of capital previously produced, economy requires that this *productive consumption*, as it is properly called, should be of the smallest value capable of creating the largest product.

§ 987. To the economical consumption of capital and labor, several things are necessary. A man would unwisely expend his capital, who should build a manufactory at a cost of one thousand dollars, when one costing half that sum would be sufficient for his business. There would be a total waste of five hundred dollars, which might have been profitably employed in carrying on his manufacturing operations. The farmer would be chargeable with the same improvidence, who should purchase twice as much land as he is able to stock and cultivate to advantage, or who should keep twice as many working animals as are necessary for the cultivation of his farm. The same may be said of the merchant who should purchase a stock of merchandise worth ten thousand dollars, when a stock of half that amount would supply the wants of his customers.

§ 988. In commencing business, therefore, a man should not only invest the least amount of capital that he can profitably employ ; but he ought so to regulate his investment, that his fixed capital shall be duly proportioned to his circulating capital ; by which we mean, that he ought to lay out so small a portion of his capital for land, buildings, or machinery, as to leave as much as possible to be employed in

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tion ? What is it designed for ? § 986. What is meant by *productive* consumption ? § 987. If a farmer should buy more land than he could cultivate, what would be the effect upon his interest ? § 988. What general principle should regulate the outlay of his capital ?

carrying on directly the business of production. Suppose that a man has a capital of two thousand dollars, and that he expends fifteen hundred dollars in the purchase of machinery, tools, &c. when an outlay of one thousand dollars for that purpose is sufficient : he has now but five hundred dollars for the purchase of the raw material of his manufacture, and provisions for his workmen, and for the payment of their wages ; whereas, by an economical apportionment of his capital, he might employ double this amount in the business of production.

§ 989. The same principle applies to the consumption of labor. A manufacturer may employ too great a number of laborers. Where there are too many workmen, some of them will generally be idle a part of the time, and one idle person will hinder many others. On the other hand, he may employ too small a number of laborers to avail himself of the greatest benefit of the division of labor, which has been explained in one of the chapters on production. For if there be too few workmen, one must perform several kinds of labor, or several different operations, which could be most profitably performed, when each workman is confined to one kind of labor, or to a single operation.

§ 990. Also, the different kinds of labor should be rightly proportioned to each other. In almost every branch of industry, there is employed a greater or less quantity of both educated and simple labor. If, therefore, a manufacturer should employ none but experienced and skilful laborers at the highest rate of wages, when a part of the labor might be done by uneducated laborers, perhaps by women and children ; he would evince a great lack of economy. On the contrary, the intrusting of important business to persons wanting the requisite experience and skill, is sometimes attended with much loss.

§ 991. Every part and every item of capital should be turned to account. A tailor who should so cut up his cloth, as to waste as much of every piece as would make a garment, must necessarily make slow progress in the way to

How ought he to proportion his fixed and circulating capitals ? § 989

What is the effect of a man's employing too many or too few laborers ?

§ 990. Wherein consists the advantage of employing a portion of



wealth. Many a mechanic has thus been kept in a state of poverty ; while others by an habitual observance of proper care in working up, or "saving all the pieces," (to use a common phrase,) have accumulated moderate fortunes in the course of their business.

§ 992. Like economy should be practised in the consumption of labor. To secure the faithful performance of all the labor employed, the farmer or mechanic must, as far as possible, personally superintend his own business. Few workmen are as careful of their employer's interest, as he is himself, or as industrious in his absence as in his presence. It is important, also, that the best tools be had, and that they be kept in the best order, and ready for use at all times. Much labor is often lost by the failure of a weak, unsound instrument, or by the use of one that is unwieldy, or out of repair.

§ 993. Hence we see, that a man who would thrive in business, must be frugal in the consumption of capital and labor. What is saved by an economical expenditure of these, reduces, by so much, the cost of the manufacture ; and his profits on the capital and labor employed are so much greater. A persevering application of these principles to almost any business, if it do not speedily put a man in the possession of a fortune, will never fail of securing to him at least a comfortable independence.

§ 994. The consumption of value to satisfy the wants and desires of individuals, is called *unproductive consumption*, in contradistinction to the consumption of value for the purpose of reproduction ; and may be considered to include the consumption of whatever is necessary to sustain human life, and render it agreeable. The expenditure of what is necessary to procure the absolute necessities of life, and a practical education, has been with some degree of propriety called productive consumption ; because without them we could either not produce any thing at all, or we could not produce it abundantly. But as no *material* product is *directly*

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simple labor ? § 992. By what management can an employer get the greatest amount of labor from his workmen ? § 993. What will be the effect of an observance of these principles of economy upon a person's prosperity ? § 994. What is *unproductive* consumption ?

produced by this consumption, we choose to call it unproductive consumption.

§ 995. A person who has learned economy in the expenditure of capital and labor for reproduction, will not be at a loss in managing the business of unproductive consumption. He will neither purchase too much of a thing at a time, nor purchase what he does not want, simply because it is cheap. And every article will be wholly consumed; that is to say, he will avail himself of all the benefit which it is capable of affording, before its use is dispensed with. And if he indulge in pleasure or amusements of any kind, they will be of a rational and intellectual character.

## CHAPTER XXII.

### *Public Consumption.*

§ 996. By recurring to those chapters in different parts of this work, which relate to taxation, duties, &c., it will be seen what are some of the objects of public expenditure, and the necessity of taxation, in order to provide the means of compensating the legislative, executive, and judicial officers of the government, and of promoting various other objects of public utility. Whether the consumption of the national capital be more properly called productive, or unproductive consumption; it is a fact which admits of no dispute, that the expenditure of money beyond what is necessary to secure the services of the best officers, and to promote the general welfare, is a total public loss.

§ 997. The different modes of taxation have been described in those parts of this work above referred to. Taxes, as we have there observed, are either *direct*, as when they

§ 995. By what general principles ought a man's household economy to be regulated?

§ 996. Is the needless expenditure of the public money a public loss? § 997. What are direct taxes? Indirect taxes? § 998, 999.

are laid upon the head or property of a person; or *indirect*, as when they are laid upon articles of consumption. But in which of these two modes taxes ought to be levied, is a question on which statesmen and political economists are not agreed.

§ 998. A large portion of the taxes collected in this country, are of the indirect kind. Such are those which are paid into the national treasury: they consist chiefly of duties paid on goods imported. It is objected to this mode of taxation, that the mass of the people do not know the amount of the taxes they pay, when they buy the commodities on which the taxes are imposed. Hence they become careless of expenditure, and are less disposed to watch those who are intrusted with the expenditure of the public treasure.

§ 999. Another objection to indirect taxation, is, that it is unequal. The poor are obliged either to forego the use of the articles taxed, or to pay as great a portion of the public tax as the rich. Whereas it is contended, that the latter ought to bear a part of the public burthen, proportioned to the relative amount of their property, or to their ability to pay. Taxes are therefore most equal when laid upon property.

§ 1000. Taxes laid upon property in proportion to its value, are clearly the most equal; and indirect taxes, so far as they augment the prices of the necessities of life, without conveying a corresponding benefit to the consumer, must be in their operation unequal. But if the conclusions which we have drawn from the arguments presented in favor of and against protective duties, and from the operation of the system of protection in this country, are correct, the duties laid upon imports do not operate as *taxes* to the consumer, at least not to the extent by many supposed. (See *Protective Duties*.)

§ 1001. In public consumption, the first and immediate

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What are the objections which are sometimes made against indirect taxation? Why are they supposed to operate unequally? § 1000. What conclusion have you formed from the arguments given for and against protective duties, in former chapters? § 1001. What is the more immediate object of public consumption? What would be the

object is the compensation of the officers of the government. Civil government is indispensable to the existence and well-being of society; and all who share in its benefits, should yield to its demands for the means of its support. But the people ought to remember, that they cannot safely intrust the protection of their rights and interests to bad men; and if they expect an equivalent for their money, they must expend it in buying the services of good and faithful officers.

§ 1002. Another object of the public expenditure, is the relief of the poor. There are, in every country, many persons who, through unavoidable misfortune, are reduced to poverty, and who cannot support themselves. Every humane government makes provision for the maintenance of such persons at the public expense. And those who have shared more liberally in the Divine benefaction, ought cheerfully to contribute to the relief of their necessitous fellow-men.

§ 1003. Of the advantages of a free and easy intercourse between the different parts of the country, and of the economy of constructing important works of internal improvement at the expense of the nation or state, we have spoken elsewhere. (See Internal Improvements.) There are other similar improvements demanded by the general welfare and prosperity of the country, the expense of which is properly chargeable to the public account.

§ 1004. A portion of the public wealth should be appropriated to the general diffusion of learning. It is for the interest of the community, that every citizen possess a good practical education. But there are many who are indifferent to the education of their children, or whose vices or misfortunes have deprived them of the means necessary to educate them properly. Benevolence, as well as a regard for the general good of society, requires that learning be encouraged and promoted by the government, to such extent

probable effect of employing bad and incompetent public officers?

§ 1002. By whom ought poor persons to be supported? § 1003. Is it good economy for a nation to expend any of its funds in making internal improvements? Show how they prove beneficial to the community in general? § 1004. State the reasons why the government

at least, as to bring within the reach of all, the means of acquiring a practical education, which shall embrace a knowledge, not only of the sciences necessary to qualify them for the common business of life, but a knowledge also of their duties as citizens, and as members of society.

§ 1005. In conclusion, the compiler is impelled, by a deep solicitude for the welfare of his country, and the preservation of its free institutions, to offer a few observations on the subject of education, as the grand means by which the people of these United States are to transmit the blessings of civil and religious liberty to their descendants. *Education is the hope of our republic.* It gives strength and stability to the government, and forms the basis of national as well as social happiness. The general diffusion of learning, therefore, is an object that demands the regard of every citizen.

§ 1006. Patriotism should be sedulously inculcated, and universally cherished. Genuine patriotism is that ardent love of country, which will induce the citizen to make all needful sacrifices to promote its welfare. It should be one of the first objects, in the education of our youth, to cause them to place a proper estimate upon republican institutions. They must early learn, that their individual happiness, no less than the happiness and prosperity of the nation, depends upon the preservation of the liberties guarantied by our invaluable constitution.

§ 1007. A useful education includes a knowledge of the principles of the government under which we live. How can any citizen be qualified to take a part in the administration of the government, who is destitute of this knowledge? Free government presupposes intelligence in the body politic. Ignorance and liberty cannot long subsist together. When men do not understand the tenure by which they hold their rights, they are incapable of maintaining them. Presuming upon the ignorance of the people, ambitious politicians will be encouraged to break through the restraints of

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should encourage and support institutions of learning? § 1005. What effect has education upon individual and national happiness? § 1006. What is patriotism? What influence will it naturally have upon the conduct of citizens? § 1007. Can you tell why a knowledge of the

the constitution, in order to acquire or retain political power, fearless of being called to account.

§ 1008. Respect and obedience to the laws should be faithfully inculcated. All laws which do not actually violate the rights of conscience, or which do not interfere with our duties to our Creator, should receive a ready and cheerful obedience. No law affecting merely our property and persons, can be violated without incurring guilt. Neither the injustice nor the inequality of a law, can justify its violation. When necessary laws are wanting for the punishment of crime, men may not take the law into their own hands, and inflict summary punishment, according to their own ideas of justice. It is the duty of the citizen to submit to the laws of the land; and to endeavor, by all peaceable and lawful means, to procure the repeal of bad laws, and the enactment of good ones.

§ 1009. Education must be united with religious principle. It is not enough that the citizen understands his duties. Knowledge, if improperly used, may be productive of great evil. Where the love of virtue does not govern the conduct of men, violations of the laws will be frequent, and the rights of men will be unsafe. Bad men will obtain the public offices; bad laws will be made; and civil and religious liberty will be destroyed. Said the revered Washington, "Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism, who should labor to subvert these great pillars of human happiness, these firmest props of the duties of men and citizens."

§ 1010. The minds of youth should be early impressed with the principles of peace. It is not intended here to discuss the question of the lawfulness of war; but merely to declare the belief, that the power of the principles of peace, is one of the most effectual means of defence of the rights of nations as well as of individuals.

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principles of government is necessary? § 1008. What would be the natural effect of a general disregard of the laws upon the interests of the community? § 1009. Why is the prevalence of moral and religious principle deemed essential to national happiness? § 1010. If all men were governed by the pure principles of peace, what would

§ 1011. Let our citizens, then, promote the general diffusion of knowledge. Let our youth be instructed in their duties as members of society and as citizens of a free government; and be taught to regard the public welfare as of higher value than the interests of individuals or of parties, and to feel themselves individually responsible for their moral and political influence; and our liberties will be safe. It has been said by a worthy citizen of another nation: "Let America be good, and America will be happy;" and, it may be added, whatever has been the fate of former republics, ours will stand an enduring witness to the truth, that MAN CAN BE GOVERNED, AND YET BE FREE.

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be the effect upon the world? § 1011. What is the general effect of the spirit of party upon the public welfare? What are the principal means by which our republican institutions may be preserved?

# DECLARATION OF INDEPENDENCE.

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IN CONGRESS, JULY 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED  
STATES OF AMERICA.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident : that all men are created equal, that they are endowed by their Creator with certain unalienable rights ; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed ; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established should not be changed for light and transient causes ; and accordingly all experience hath shown, that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been



the patient sufferance of these colonies ; and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation, till his assent should be obtained ; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected ; whereby the legislative powers incapable of annihilation, have returned to the people at large, for their exercise, the state remaining, in the mean time, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these states ; for that purpose obstructing the laws for naturalization of foreigners ; refusing to pass others to encourage their migration hither, and raising the condition of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither

swarms of officers, to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws, giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas to be tried for pretended offences:

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our governments:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become

the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections among us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind—enemies in war, in peace friends.

We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name, and by the authority, of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and do all other acts and things which independent states may of right do. And for the support of the declaration, with a firm reliance on the protection of Divine Providence, we mutually

pledge to each other our lives, our fortunes, and our sacred honor.

JOHN HANCOCK,  
*President of Congress, and*  
*Delegate from Massachusetts.*

*New Hampshire.* Josiah Bartlett, William Whipple, Matthew Thornton.

*Massachusetts Bay.* Samuel Adams, John Adams, Robert Treat Paine, Elbridge Gerry.

*Rhode Island, &c.* Stephen Hopkins, William Ellery.

*Connecticut.* Roger Sherman, Samuel Huntington, William Williams, Oliver Wolcott.

*New York.* William Floyd, Philip Livingston, Francis Lewis, Lewis Morris.

*New Jersey.* Richard Stockton, John Witherspoon, Francis Hopkinson, John Hart, Abraham Clark.

*Pennsylvania.* Robert Morris, Benjamin Rush, Benjamin Franklin, John Morton, George Clymer, James Smith, George Taylor, James Wilson, George Ross.

*Delaware.* Cæsar Rodney, George Read, Thomas M'Kean.

*Maryland.* Samuel Chase, William Paca, Thomas Stone, Charles Carroll, of Carrollton.

*Virginia.* George Wythe, Richard Henry Lee, Thomas Jefferson, Benjamin Harrison, Thomas Nelson, Jr., Francis Lightfoot Lee, Carter Braxton.

*North Carolina.* William Hooper, Joseph Hewes, John Penn.

*South Carolina.* Edward Rutledge, Thomas Heyward, Jr., Arthur Middleton.

*Georgia.* Button Gwinnett, Lyman Hall, George Walton.

Attest, CHARLES THOMPSON, *Secretary.*

**THE**  
**CONSTITUTION**  
**OF THE**  
**STATE OF NEW-YORK.**

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WE, the People of the State of New-York, acknowledging with gratitude the grace and beneficence of God, in permitting us to make choice of our form of government, do establish this constitution.

**ARTICLE FIRST.**

**SEC. I.** The legislative power of this state shall be vested in a senate and assembly.

**SEC. II.** The senate shall consist of thirty-two members. The senators shall be chosen for four years, and shall be freeholders. The assembly shall consist of one hundred and twenty-eight members, who shall be annually elected.

**SEC. III.** A majority of each house shall constitute a quorum to do business. Each house shall determine the rules of its own proceedings, and be the judge of the qualifications of its own members. Each house shall choose its own officers; and the senate shall choose a temporary president, when the lieutenant-governor shall not attend as president, or shall act as governor.

**SEC. IV.** Each house shall keep a journal of its proceedings, and publish the same, except such parts as require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days.

**SEC. V.** The state shall be divided into eight districts, to be called senate districts, each of which shall choose four senators.

The first district shall consist of the counties of Suffolk, Queens, Kings, Richmond and New-York.

The second district shall consist of the counties of Westchester, Putnam, Dutchess, Rockland, Orange, Ulster and Sullivan.

The third district shall consist of the counties of Greene, Columbia, Albany, Rensselaer, Schoharie and Schenectady.

The fourth district shall consist of the counties of Saratoga, Mont-

gomery, Hamilton, Washington, Warren, Clinton, Essex, Franklin and St. Lawrence.

The fifth district shall consist of the counties of Herkimer, Oneida, Madison, Oswego, Lewis and Jefferson.

The sixth district shall consist of the counties of Delaware, Otsego, Chenango, Broome, Cortland, Tompkins and Tioga.

The seventh district shall consist of the counties of Onondaga, Cayuga, Seneca and Ontario.

The eighth district shall consist of the counties of Steuben, Livingston, Monroe, Genesee, Niagara, Erie, Allegany, Cattaraugus and Chautauque.

As soon as the senate shall meet, after the first election to be held in pursuance to this constitution, they shall cause the senators to be divided by lot, into four classes, of eight in each, so that every district shall have one senator of each class; the classes to be numbered, one, two, three and four. And the seats of the first class shall be vacated at the end of the first year; of the second class at the end of the second year; of the third class at the end of the third year; of the fourth class at the end of the fourth year; in order that one senator be annually elected in each senate district.

SEC. VI. An enumeration of the inhabitants of the state shall be taken, under the direction of the legislature, in the year one thousand eight hundred and twenty-five, and at the end of every ten years thereafter; and the said districts shall be so altered by the legislature, at the first session after the return of every enumeration, that each senate district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens, paupers, and persons of color not taxed; and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory, and no county shall be divided in the formation of a senate district.

SEC. VII. The members of the assembly shall be chosen by counties, and shall be apportioned among the several counties of the state, as nearly as may be, according to the number of their respective inhabitants, excluding aliens, paupers, and persons of color not taxed. An apportionment of members of assembly shall be made by the legislature, at its first session after the return of every enumeration; and when made, shall remain unaltered until another enumeration shall have been taken. But an apportionment of members of the assembly shall be made by the present legislature, according to the last enumeration taken under the authority of the United States, as nearly as may be. Every county heretofore established, and separately organized, shall always be entitled to one member of the assembly; and no new county shall hereafter be erected, unless its population shall entitle it to a member.

SEC. VIII. Any bill may originate in either house of the legislature; and all bills passed by one house, may be amended by the other.

SEC. IX. The members of the legislature shall receive for their services, a compensation to be ascertained by law, and paid out of the public treasury; but no increase of the compensation shall take

effect during the year in which it shall have been made. And no law shall be passed, increasing the compensation of the members of the legislature beyond the sum of three dollars a day.

SEC. X. No member of the legislature shall receive any civil appointment from the governor and senate, or from the legislature, during the term for which he shall have been elected.

SEC. XI. No person being a member of congress, or holding any judicial or military office under the United States, shall hold a seat in the legislature. And if any person shall, while a member of the legislature, be elected to congress, or appointed to any office, civil or military, under the government of the United States, his acceptance thereof, shall vacate his seat.

SEC. XII. Every bill which shall have passed the senate and assembly, shall, before it become a law, be presented to the governor. If he approve, he shall sign it; but if not, he shall return it with his objections, to that house in which it shall have originated; who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two-thirds of the members present shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted,) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislature shall, by their adjournment, prevent its return; in which case it shall not be a law.

SEC. XIII. All officers holding their offices during good behavior, may be removed by joint resolution of the two houses of the legislature, if two-thirds of all the members elected to the assembly, and a majority of all the members elected to the senate, concur therein.

SEC. XIV. The political year shall begin on the first day of January; and the legislature shall every year assemble on the first Tuesday of January, unless a different day shall be appointed by law.

SEC. XV. The next election for governor, lieutenant-governor, senators and members of assembly, shall commence on the first Monday of November, one thousand eight hundred and twenty-two; and all subsequent elections shall be held at such time, in the month of October or November, as the legislature shall by law provide.

SEC. XVI. The governor, lieutenant-governor, senators and members of assembly, first elected under this constitution, shall enter on the duties of their respective offices on the first day of January, one thousand eight hundred and twenty-three: and the governor, lieutenant-governor, senators and members of assembly, now in office, shall continue to hold the same until the first day of January, one thousand eight hundred and twenty-three, and no longer.

## ARTICLE SECOND.

SEC. I. Every male citizen of the age of twenty-one years, who shall have been an inhabitant of this state one year preceding any election, and for the last six months a resident of the town or county where he may offer his vote; and shall have, within the year next preceding the election, paid a tax to the state or county, assessed upon his real or personal property; or shall by law be exempted from taxation; or being armed and equipped according to law, shall have performed, within that year, military duty in the militia of this state; or who shall be exempted from performing military duty in consequence of being a fireman in any city, town or village, in this state: And also every male citizen of the age of twenty-one years, who shall have been, for three years next preceding such election, an inhabitant of this state, and for the last year, a resident in the town or county where he may offer his vote; and shall have been, within the last year, assessed to labor on the public highways, and shall have performed the labor, or paid an equivalent therefor, according to law; shall be entitled to vote in the town or ward where he actually resides, and not elsewhere, for all officers that now are, or hereafter may be, elective by the people. But no man of color, unless he shall have been for three years a citizen of this state, and for one year next preceding any election, shall be seized and possessed of a freehold estate of the value of two hundred and fifty dollars, over and above all debts and incumbrances charged thereon; and shall have been actually rated, and paid a tax thereon, shall be entitled to vote at any such election. And no person of color shall be subject to direct taxation, unless he shall be seized and possessed of such real estate as aforesaid.

SEC. II. Laws may be passed, excluding from the right of suffrage, persons who have been or may be convicted of infamous crimes.

SEC. III. Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established.

SEC. IV. All elections by the citizens shall be by ballot, except for such town officers as may by law be directed to be otherwise chosen.

## ARTICLE THIRD.

SEC. I. The executive power shall be vested in a governor. He shall hold his office for two years; and a lieutenant-governor shall be chosen at the same time, and for the same term.

SEC. II. No person except a native citizen of the United States, shall be eligible to the office of governor; nor shall any person be eligible to that office, who shall not be a free-holder, and shall not have attained the age of thirty years, and have been five years a resident within this state; unless he shall have been absent during that time on public business of the United States, or of this state.

SEC. III. The governor and lieutenant-governor shall be elected at the times and places of choosing members of the legislature. The persons respectively having the highest number of votes for



governor and lieutenant-governor, shall be elected; but in case two or more shall have an equal and the highest number of votes for governor, or for lieutenant-governor, the two houses of the legislature shall, by joint ballot, choose one of the said persons so having an equal and the highest number of votes for governor or lieutenant-governor.

SEC. IV. The governor shall be general and commander in chief of the militia, and admiral of the navy of the state. He shall have power to convene the legislature, (or the senate only,) on extraordinary occasions. He shall communicate by message to the legislature at every session, the condition of the state; and recommend such matters to them as he shall judge expedient. He shall transact all necessary business with the officers of government, civil and military. He shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws are faithfully executed. He shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the term for which he shall have been elected.

SEC. V. The governor shall have power to grant reprieves and pardons after conviction, for all offences, except treason and cases of impeachment. Upon convictions for treason, he shall have power to suspend the execution of the sentence, until the case shall be reported to the legislature at its next meeting; when the legislature shall either pardon or direct the execution of the criminal, or grant a further reprieve.

SEC. VI. In case of the impeachment of the governor, or his removal from office, death, resignation, or absence from the state, the powers and duties of the office shall devolve upon the lieutenant-governor for the residue of the term, or until the governor, absent or impeached, shall return or be acquitted. But when the governor shall, with the consent of the legislature, be out of the state in time of war, at the head of a military force thereof, he shall continue commander in chief of all the military force of the state.

SEC. VII. The lieutenant-governor shall be president of the senate, but shall have only a casting vote therein. If, during a vacancy of the office of governor, the lieutenant-governor shall be impeached, displaced, resign, die, or be absent from the state, the president of the senate shall act as governor, until the vacancy shall be filled, or the disability shall cease.

#### ARTICLE FOURTH.

SEC. I. Militia officers shall be chosen or appointed as follows: Captains, subalterns and non-commissioned officers, shall be chosen by the written votes of the members of their respective companies. Field officers of regiments and separate battalions, by the written votes of the commissioned officers of the respective regiments and separate battalions. Brigadier-generals, by the field-officers of their respective brigades. Major-generals, brigadier-generals and commanding officers of regiments or separate battalions, shall ap-

point the staff-officers of their respective divisions, brigades, regiments or separate battalions.

SEC. II. The governor shall nominate, and with the consent of the senate, appoint, all major-generals, brigade inspectors and chiefs of the staff departments, except the adjutant-general and commissary-general; the adjutant-general shall be appointed by the governor.

SEC. III. The legislature shall, by law, direct the time and manner of electing militia officers, and of certifying their election to the governor.

SEC. IV. The commissioned officers of the militia shall be commissioned by the governor; and no commissioned officer shall be removed from office, unless by the senate, on the recommendation of the governor, stating the grounds on which such removal is recommended, or by the decision of a court-martial pursuant to law. The present officers of the militia shall hold their commissions, subject to removal as before provided.

SEC. V. In case the mode of election and appointment of militia officers, hereby directed, shall not be found conducive to the improvement of the militia, the legislature may abolish the same, and provide by law for their appointment and removal, if two-thirds of the members present in each house shall concur therein.

SEC. VI. The secretary of state, comptroller, treasurer, attorney-general, surveyor-general, and commissary-general, shall be appointed as follows: The senate and assembly shall each openly nominate one person for the said offices respectively, after which, they shall meet together, and if they shall agree in their nominations, the person so nominated shall be appointed to the office for which he shall be nominated. If they shall disagree, the appointment shall be made by the joint ballot of the senators and members of assembly. The treasurer shall be chosen annually. The secretary of state, comptroller, attorney-general, surveyor-general, and commissary-general, shall hold their offices for three years, unless sooner removed by concurrent resolution of the senate and assembly.

SEC. VII. The governor shall nominate, by message in writing, and with the consent of the senate, shall appoint all judicial officers, except justices of the peace: who shall be appointed in the manner following, that is to say: The board of supervisors in every county in this state, shall, at such time as the legislature may direct, meet together; and they, or a majority of them so assembled, shall nominate so many persons as shall be equal to the number of justices of the peace to be appointed in the several towns in the respective counties. And the judges of the respective county courts, or a majority of them, shall also meet and nominate a like number of persons; and it shall be the duty of the said board of supervisors, and judges of county courts, to compare such nominations, at such time and place as the legislature may direct; and if, on such comparison, the said boards of supervisors and judges of county courts shall agree in their nominations, in all, or in part, they shall file a certificate of the nominations in which they

shall agree, in the office of the clerk of the county; and the person or persons named in such certificates, shall be justices of the peace; and in case of disagreement in the whole, or in part, it shall be the farther duty of the said boards of supervisors and judges respectively, to transmit their said nominations, so far as they disagree in the same, to the governor, who shall select from the said nominations, and appoint so many justices of the peace as shall be requisite to fill the vacancies. Every person appointed a justice of the peace, shall hold his office for four years, unless removed by the county court, for causes particularly assigned by the judges of the said court; and no justice of the peace shall be removed, until he shall have notice of the charges made against him, and an opportunity of being heard in his defence.

SEC. VIII. Sheriffs, and clerks of counties, including the register, and clerk of the city and county of New-York, shall be chosen by the electors of the respective counties, once in every three years, and as often as vacancies shall happen. Sheriffs shall hold no other office, and be ineligible for the next three years after the termination of their offices. They may be required by law to renew their security, from time to time; and in default of giving such new security, their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the sheriff; and the governor may remove any such sheriff, clerk or register, at any time within the three years for which he shall be elected, giving to such sheriff, clerk or register, a copy of the charge against him, and an opportunity of being heard in his defence, before any removal shall be made.

SEC. IX. The clerks of courts, except those clerks whose appointment is provided for in the preceding section, shall be appointed by the courts of which they respectively are clerks; and district attorneys by the county courts. Clerks of courts, and district attorneys, shall hold their offices for three years, unless sooner removed by the courts appointing them.

SEC. X. The mayors of all the cities in this state, shall be appointed annually, by the common councils of the respective cities.

SEC. XI. So many coroners as the legislature may direct, not exceeding four in each county, shall be elected in the same manner as sheriffs, and shall hold their offices for the same term, and be removable in like manner.

SEC. XII. The governor shall nominate, and with the consent of the senate appoint, masters and examiners in chancery; who shall hold their offices for three years, unless sooner removed by the senate, on the recommendation of the governor. The registers and assistant registers shall be appointed by the chancellor, and hold their offices during his pleasure.

SEC. XIII. The clerk of the court of oyer and terminer, and general sessions of the peace, in and for the city and county of New-York, shall be appointed by the court of general sessions of the peace in said city, and hold his office during the pleasure of the said court; and such clerks and other officers of courts, whose appointment is not herein provided for, shall be appointed by the

several courts, or by the governor with the consent of the senate, as may be directed by law.

SEC. XIV. The special justices, and the assistant justices, and their clerks, in the city of New-York, shall be appointed by the common council of the said city; and shall hold their offices for the same term that the justices of the peace in the other counties in the state hold their offices, and shall be removed in like manner.

SEC. XV. All officers heretofore elective by the people, shall continue to be elected; and all other officers whose appointment is not provided for by this constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed, as may by law be directed.

SEC. XVI. Where the duration of any office is not prescribed by this constitution, it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment.

#### ARTICLE FIFTH.

SEC. I. The court for the trial of impeachments and the correction of errors, shall consist of the president of the senate, the senators, the chancellor, and the justices of the supreme court, or the major part of them; but when an impeachment shall be prosecuted against the chancellor, or any justice of the supreme court, the person so impeached shall be suspended from exercising his office, until his acquittal; and when an appeal from a decree in chancery shall be heard, the chancellor shall inform the court of the reasons for his decree, but shall have no voice in the final sentence; and when a writ of error shall be brought on a judgment of the supreme court, the justices of that court shall assign the reason for their judgment, but shall not have a voice for its affirmance or reversal.

SEC. II. The assembly shall have the power of impeaching all civil officers of this state for mal and corrupt conduct in office, and for high crimes and misdemeanors; but a majority of all the members elected shall concur in an impeachment. Before the trial of an impeachment, the members of the court shall take an oath or affirmation, truly and impartially to try and determine the charge in question, according to evidence; and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment, in cases of impeachment, shall not extend farther than in the removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under this state; but the party convicted shall be liable to indictment and punishment according to law.

SEC. III. The chancellor and justices of the supreme court shall hold their offices during good behavior, or until they shall attain the age of sixty years.

SEC. IV. The supreme court shall consist of a chief justice and two justices, any of whom may hold the court.

SEC. V. The state shall be divided by law, into a convenient number of circuits, not less than four nor exceeding eight; subject to alteration by the legislature, from time to time, as the public good may require; for each of which, a circuit judge shall be appointed in the same manner, and hold his office by the same tenure, as the justices of the supreme court; and who shall possess the powers of a justice of the supreme court at chambers, and in the trial of issues joined in the supreme court, and in courts of oyer and terminer and gaol delivery. And such equity powers may be vested in the said circuit judges, or in the county courts, or in such other subordinate courts as the legislature may by law direct, subject to the appellate jurisdiction of the chancellor.

SEC. VI. Judges of the county courts, and recorders of cities, shall hold their offices for five years, but may be removed by the senate, on the recommendation of the governor, for causes to be stated in such recommendation.

SEC. VII. Neither the chancellor, nor justices of the supreme court, nor any circuit judges, shall hold any other office of public trust. All votes for any elective office, given by the legislature or the people, for the chancellor, or a justice of the supreme court or circuit judge, during his continuance in his judicial office, shall be void.

#### ARTICLE SIXTH.

SEC. I. Members of the legislature, and all officers, executive and judicial, except such inferior officers as may by law be exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation:

I do solemnly swear, (or affirm, as the case may be,) that I will support the constitution of the United States, and the constitution of the State of New-York; and that I will faithfully discharge the duties of the office of \_\_\_\_\_ according to the best of my ability.

And no other oath, declaration or test, shall be required as a qualification for any office of public trust.

#### ARTICLE SEVENTH.

SEC. I. No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers.

SEC. II. The trial by jury, in all cases in which it has been heretofore used, shall remain inviolate forever; and no new court shall be instituted, but such as shall proceed according to the course of the common law except such courts of equity as the legislature is herein authorized to establish.

SEC. III. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all mankind; but the liberty of conscience hereby secured, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

SEC. IV. *And whereas* the ministers of the gospel are, by their profession, dedicated to the service of God and the cure of souls, and ought not to be diverted from the great duties of their functions; therefore, no minister of the gospel, or priest of any denomination whatsoever, shall at any time hereafter, under any pretence or description whatever, be eligible to, or capable of holding any civil or military office or place within this state.

SEC. V. The militia of this state shall, at all times hereafter, be armed and disciplined, and in readiness for service; but all such inhabitants of this state, of any religious denomination whatever, as, from scruples of conscience, may be averse to bearing arms, shall be excused therefrom, by paying to the state an equivalent in money; and the legislature shall provide by law for the collection of such equivalent, to be estimated according to the expense, in time and money, of an ordinary able-bodied militia man.

SEC. VI. The privilege of the writ of habeas corpus shall not be suspended, unless when, in case of rebellion or invasion, the public safety may require its suspension.

SEC. VII. No person shall be held to answer for a capital, or otherwise infamous crime, (except, in cases of impeachment, and in cases of the militia, when in actual service; and the land and naval forces in time of war, or which this state may keep, with the consent of congress, in time of peace, and in cases of petit larceny, under the regulation of the legislature;) unless on presentment or indictment of a grand jury; and in every trial on impeachment or indictment, the party accused shall be allowed counsel as in civil actions. No person shall be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall he be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

SEC. VIII. Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments for libels, the truth may be given in evidence, to the jury; and if it shall appear to the jury that the matter charged as libellous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

SEC. IX. The assent of two-thirds of the members elected to each branch of the legislature, shall be requisite to every bill appropriating the public moneys or property for local or private purposes, or creating, continuing, altering or renewing any body politic or corporate.

SEC. X. The proceeds of all lands belonging to this state, except such parts thereof as may be reserved or appropriated to public use, or ceded to the United States, which shall hereafter be sold or disposed of, together with the fund denominated the common school fund, shall be and remain a perpetual fund; the interest of

which shall be inviolably appropriated and applied to the support of common schools throughout the state. Rates of toll, not less than those agreed to by the canal commissioners, and set forth in their report to the legislature of the twelfth of March, one thousand eight hundred and twenty-one, shall be imposed on and collected from all parts of the navigable communications between the great western and northern lakes and Atlantic ocean, which now are or hereafter shall be made and completed: And the said tolls, together with the duties on the manufacture of all salt, as established by the act of the fifteenth of April, one thousand eight hundred and seventeen; and the duties on goods sold at auction, excepting therefrom the sum of thirty-three thousand five hundred dollars, otherwise appropriated by the said act; and the amount of the revenue established by the act of the legislature of the thirtieth of March, one thousand eight hundred and twenty, in lieu of the tax upon steam-boat passengers, shall be and remain inviolably appropriated and applied to the completion of such navigable communications, and to the payment of the interest and reimbursement of the capital of the money already borrowed, or which hereafter shall be borrowed, to make and complete the same. And neither the rates of toll on the said navigable communications; nor the duties on the manufacture of salt aforesaid; nor the duty on goods sold at auction, as established by the act of the fifteenth of April, one thousand eight hundred and seventeen; nor the amount of the revenue established by the act of March the thirtieth, one thousand eight hundred and twenty, in lieu of the tax upon steam-boat passengers; shall be reduced or diverted, at any time before the full and complete payment of the principal and interest of the money borrowed or to be borrowed as aforesaid. And the legislature shall never sell or dispose of the salt springs belonging to this state, nor the land contiguous thereto, which may be necessary or convenient for their use, nor the said navigable communications, or any part or section thereof; but the same shall be and remain the property of this state.

SEC. XI. No lottery shall hereafter be authorized in this state; and the legislature shall pass laws to prevent the sale of all lottery tickets within this state, except in lotteries already provided for by law.

SEC. XII. No purchase or contract for the sale of lands in this state, made since the fourteenth day of October, one thousand seven hundred and seventy-five, or which may hereafter be made, of, or with the Indians in this state, shall be valid, unless made under the authority and with the consent of the legislature.

SEC. XIII. Such parts of the common law, and of the acts of the legislature of the colony of New-York, as together did form the law of the said colony, on the nineteenth day of April, one thousand seven hundred and seventy-five, and the resolutions of the congress of the said colony, and of the convention of the state of New-York, in force on the twentieth day of April, one thousand seven hundred and seventy-seven, which have not since expired, or been repealed or altered; and such acts of the legislature of this state, as are now in force, shall be and continue the law of this state, sub

ject to such alterations as the legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof as are repugnant to the constitution, are hereby abrogated.

SEC. XIV. All grants of land within this state, made by the king of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void. But nothing contained in this constitution shall affect any grants of land within this state, made by the authority of the said king or his predecessors; or shall annul any charters to bodies politic and corporate, by him or them made, before that day; or shall affect any such grants or charters since made by this state or by persons acting under its authority; or shall impair the obligation of any debts contracted by the state, or individuals, or bodies corporate, or any other rights of property, or any suits, actions, rights of action, or other proceedings in courts of justice.

#### ARTICLE EIGHTH.

SEC. I. Any amendment or amendments to this constitution, may be proposed in the senate or assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on the journals with the yeas and nays taken thereon, and referred to the legislature then next to be chosen, and shall be published for three months previous to the time of making such choice; and if, in the legislature next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by two-thirds of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the legislature, voting thereon, such amendment or amendments shall become a part of the constitution.

#### ARTICLE NINTH.

SEC. I. This constitution shall be in force from the last day of December, in the year one thousand eight hundred and twenty-two. But all those parts of the same which relate to the right of suffrage; the division of the state into senate districts; the number of members of the assembly to be elected, in pursuance of this constitution; the apportionment of members of assembly; the election hereby directed to commence on the first Monday of November, in the year one thousand eight hundred and twenty-two; the continuance of the members of the present legislature in office until the first day of January, in the year one thousand eight hundred and twenty-three; and the prohibition against authorizing lotteries; the prohibition against appropriating the public moneys or property for local or private purposes, or creating, continuing, altering or



renewing any body politic or corporate, without the assent of two-thirds of the members elected to each branch of the legislature, shall be in force and take effect from the last day of February next. The members of the present legislature shall, on the first Monday of March next, take and subscribe an oath or affirmation to support this constitution, so far as the same shall then be in force. Sheriffs, clerks of counties, and coroners, shall be elected at the election hereby directed to commence on the first Monday in November, in the year one thousand eight hundred and twenty-two; but they shall not enter on the duties of their office before the first day of January then next following. The commissions of all persons holding civil offices on the last Day of December, one thousand eight hundred and twenty-two, shall expire on that day; but the officers then in commission, may respectively continue to hold their said offices until new appointments or elections shall take place under this constitution.

SEC. II. The existing laws relative to the manner of notifying, holding and conducting elections, making returns and canvassing votes, shall be in force, and observed in respect to the elections hereby directed to commence on the first Monday of November, in the year one thousand eight hundred and twenty-two, so far as the same are applicable. And the present legislature shall pass such other and further laws as may be requisite for the execution of the provisions of this constitution in respect to elections.

DONE in Convention at the Capitol, in the city of Albany, the tenth day of November, in the year one thousand eight hundred and twenty-one, and of the independence of the United States of America, the forty-sixth.

In witness whereof, we have hereunto subscribed our names.

DANIEL D. TOMPKINS, *President*.

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## AMENDMENTS.

### AMENDMENT No. I.

[The following amendments to the Constitution were proposed by the legislature in 1825, were referred to the legislature of 1826, agreed to by two-thirds of the members elected to each house of that legislature, submitted to the people, and approved and ratified at an election held on the sixth, seventh and eighth days of November, 1826.]

That the people of this state, in their several towns, shall at their

annual election, and in such manner as the legislature shall direct, elect by ballot their justices of the peace; and the justices so elected in any town, shall immediately thereafter meet together, and in presence of the supervisor and town clerk of the said town, be divided by lot into four classes, of one in each class, and be numbered, one, two, three and four; and the office of number one shall expire at the end of the first year, of number two at the end of the second year, of number three at the end of the third year, and of number four at the end of the fourth year, in order that one justice may thereafter be annually elected; and that so much of the seventh section of the fourth article of the constitution of this state as is inconsistent with this amendment, be abrogated.

#### AMENDMENT. No. II.

That so much of the first section of the second article of the constitution as prescribes the qualifications of voters, other than persons of color, be, and the same is hereby abolished, and that the following be substituted in the place thereof:

Every male citizen of the age of twenty-one years, who shall have been an inhabitant of this state one year next preceding any election, and for the last six months a resident of the county where he may offer his vote, shall be entitled to vote in the town or ward where he actually resides, and not elsewhere, for all officers that now are, or hereafter may be elective by the people.

#### AMENDMENT No. III.

[The following amendments were proposed in 1832. agreed to by two-thirds of the members elected to each house in 1833, submitted to the people, and approved and ratified at the election in November, 1833.]

That the duties on the manufacture of salt, as established by the act of the fifteenth of April, one thousand eight hundred and seventeen, and by the tenth section of the seventh article of the constitution of this state, may at any time hereafter be reduced by an act of the legislature of this state; but shall not, while the same is appropriated and pledged by the said section, be reduced below the sum of six cents upon each and every bushel; and the said duties shall remain inviolably appropriated and applied as is provided by the said tenth section.

And that so much of the said tenth section of the seventh article of the constitution of this state, as is inconsistent with this amendment, be abrogated.

#### AMENDMENT No. IV.

At the end of the tenth section of the fourth article of the said constitution, add the following words: "Except in the city of New-York, in which city the mayor shall be chosen annually by the electors thereof qualified to vote for the other charter officers of the said city, and at the time of the election of such officers."

## AMENDMENT No. V.

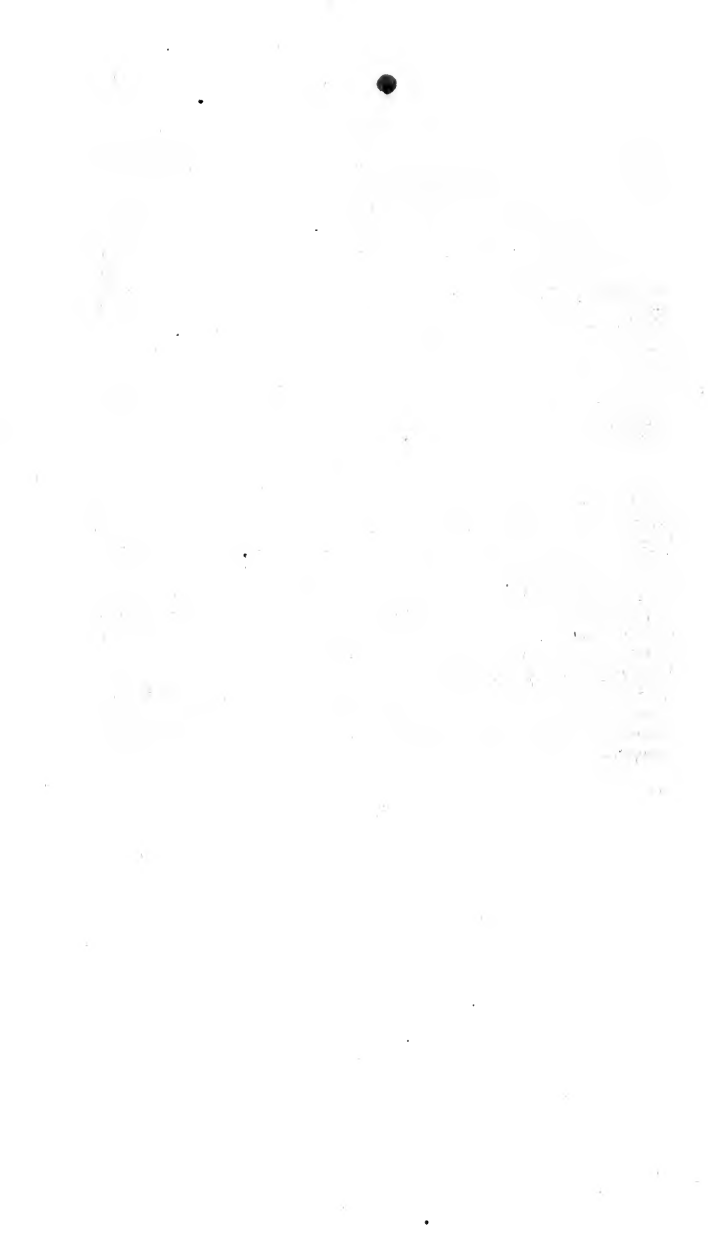
[The following amendment was proposed in 1834, agreed to by two-thirds of the members elected to each house in 1835, submitted to the people and ratified at the election held in November, 1835.]

Whenever a sufficient amount of money shall be collected and safely invested for the reimbursement of such part as may then be unpaid of the money borrowed for the construction of the Erie and Champlain canals, the tenth section of the seventh article of the constitution of this state, as far as it relates to the amount of duties on the manufacture of salt, and the amount of duties on goods sold at auction, shall cease and determine; and thereafter the duties on goods sold at auction, excepting therefrom the sum of thirty-three thousand five hundred dollars otherwise appropriated by the act of the fifteenth of April, one thousand eight hundred and seventeen, and the duties on the manufacture of salt, shall be restored to the general fund.

## AMENDMENT No. VI.

[The following amendment was proposed in 1837, agreed to by two-thirds of the members elected to each house in the year 1838, submitted to the people and approved and ratified at the election in November, 1839.]

Mayors of the several cities of this state, may be elected annually by the male inhabitants entitled to vote for members of the common council of such cities respectively, in such manner as the legislature shall by law provide; and the legislature may, from time to time, make such provisions by law for the election of any one or more of such mayors; but until such provision shall be made by law, such mayors (excepting the mayor of the city of New-York, shall be appointed in the manner now provided by the constitution of this state; and so much of the tenth section of article fourth of the constitution of this state, as is inconsistent with this amendment, is hereby abrogated.



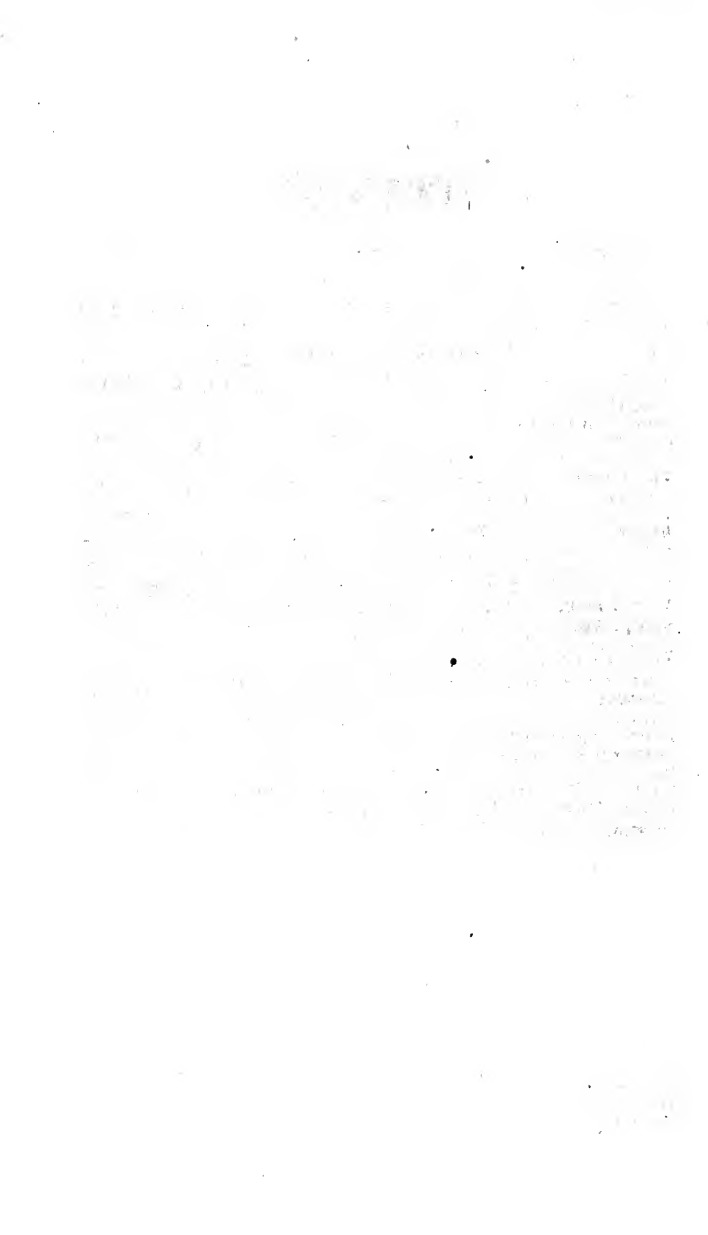
## APPENDIX.

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*Note to § 306, 307.* By acts of congress of more recent date, the laws respecting navigation have been essentially modified. Vessels of the United States are now, in most, if not all cases, admitted into the ports of the United States, free of duty. And on proclamation being made by the president, that any foreign country no longer imposes duties on vessels of the United States, the like privilege shall be extended to the vessels of such foreign country.

*Note to § 312.* The penalty mentioned in this section is incurred only when such person is employed, or admitted as a passenger, *in a foreign port*, and without a written permission from the proper officers of the country of which such person is a citizen. If the vessel be a public vessel the forfeiture is one thousand dollars; if a private vessel, five hundred dollars.

*Note to § 533.* It is required, further, that the sealed certificate of the clerk to any judicial proceeding be accompanied by a certificate of the judge, chief justice, or presiding magistrate, that the attestation of the clerk is in due form. The acts of a state legislature must have the seal of the state affixed to them, in order to be entitled to credit in another state.



# INDEX

OF SUBJECTS, MOST OF WHICH ARE NOT FOUND IN THE  
TABLE OF CONTENTS.

---

*The Numbers refer to the Sections.*

- AMBASSADORS, powers and duties of, 483; privileges of, 386; how appointed, 479, 480.
- ARISTOCRACY, defined, 34.
- APPOINTMENT of subordinate executive officers, how made, 91, 92, 479.
- ATTAINER, (See bills of attainder.)
- BAIL, definition and objects of, 127; (See bailment.)
- BAIL, excessive, prohibited by constitution, 576.
- BAILMENT, definition of, 654.
- BIGAMY, definition of, 604; (See polygamy.)
- BILL, defined, 75; bills, how passed, 75-82; for raising revenue, originate only in the House, 260, 261.
- BILLS of attainder, may not be passed, 432, 442, 448; defined, 433.
- BILLS of credit, states may not emit, 442; defined, 446.
- BODY politic, meaning of, 15.
- BRIBERY, what it is, 737; how punished, 740.
- BURGLARY, what it is, 731; how punished, 740.
- CAPITATION tax, 131; in what cases restricted by constitution, 434, 435.
- CARRIERS, how far liable for loss of property, 663, 664.
- CHARGE of affairs, duties and compensation of, 484.
- CENSUS, origin and meaning of, 203.
- CHARTER, definition of, 40.
- CHATELS real, 640.
- CITIZENS, privileges of, secured in all the states, 533, 534.
- COASTING trade, regulations concerning, 301.
- COMMUNITY, meaning of, 15.
- CONGRESS, compensation of members, 253, 254; officers of, how chosen, 214.
- CONSTITUTION, signification of, 40; of United States, supreme law of the land, 554, 555.
- CONSULS, powers and duties of, 485; how appointed, 479.
- CONTRACTS, obligation of, may not be impaired, 442, 449.
- CONTRACTS of sale, law concerning, 648, 653.
- CORPORATION, definition of, 15.
- CORRUPTION of blood, abolished, 529; defined, 531.
- COUNTERFEITING, defined, 732; punishment of, 740.
- COURTS of justice, in states, different kinds of, 107-119.
- CUSTOMS, meaning of, 136.
- DEEDS and mortgages, nature of, 635-639.
- DEMOCRACY, definition of, 37, 38.
- DESPOTISM, defined, 32, 33.
- DUELLING, what constitutes the offence, and how punishable, 738.

## INDEX.

- DUTIES**, different kinds defined, 135, 136, 271, 274, 292, 293; must be equal in all the states, 436, 437; collection of, 272, 275-281; may not be laid by states, 450, 451.
- ELECTION**, by ballot and viva voce described, 53; majority and plurality, 54.
- EMBARGO**, its meaning and constitutionality, 317.
- EMBEZZLING**, definition and punishment of, 735, 740.
- ENVOY**, plenipotentiary. (See ambassador.)
- ESTATES** real, title to, how acquired and secured, 630-639.
- EXCISE**, meaning of, 136.
- EX POST FACTO** law, may not be passed, 432, 433, 442, 448.
- FACTION**, in what it consists, 189.
- FEDERAL**, meaning of the term, 179, 183.
- FORGERY**, defined, 732; how punished, 740.
- FREEHOLDER**, definition of, 56, 631.
- GIFTS**, when valid, 643.
- HABEAS CORPUS**, privileges of writ of secured, 430; meaning of, 431; writ, how obtained, &c., 598-600.
- HOMICIDE**, defined, 728.
- IMPEACHMENT**, and mode of trial, 105, 106, 229, 230, 231; what officers removed by, 496.
- IMPOSTS**, definition of, 136.
- INTERNAL** improvements, power of congress concerning, 424, 425; effects of on productive industry, 872-879.
- JUDGES**, appointment and compensation of, 98, 102, 479, 509.
- JURISDICTION**, defined, 107.
- JURY**, trial by, secured, 122, 521, 522, 575.
- LARCENY**, definition and punishment of, 734, 740.
- LIBEL** and slander, 592-596.
- LIEN**, general and particular, 668.
- MANSLAUGHTER**, law concerning, 726, 727; how punished, 740.
- MARRIAGE**, law relating to, 602-608.
- MILITIA**, power of congress concerning, 403, 408.
- MINISTERS**, public, appointment and duties of, 479, 480, 483-485.
- MINT** of the United States, and manner of coining money, 337-339.
- MONARCHY**, absolute and mixed, 31-36.
- MONEY**, causes of abundance and scarcity of, 907; quantity and value of, not the same thing, 904.
- NEGATIVE**, power of, absolute and qualified, defined, 80; utility of, 81, 82.
- NOBILITY**, title of, may not be granted by United States, 440, 441.
- NOTARIES PUBLIC**, duties of, 687, 688.
- OATH** to support constitution to be taken, 473, 474, 556, 557.
- OLIGARCHY**, definition of, 34.
- PARDON** and reprieve, utility of power, 90.
- PARLIAMENT** of Great Britain how constituted, 35.
- PASSPORTS**, what, and when granted, 310.
- PERJURY**, definition of, 736; punishment of, 740.
- PETITION**, right of secured, 563.
- POLYGAMY**, definition and punishment of, 604.
- PRICE**, causes of the fluctuation of, 754, 906.
- PRODUCT**, definition of, 755, 771.
- PROPERTY**, manner of descent to heirs, 632-634.
- QUARANTINE**, defined, and regulations concerning, 318.
- QUORUM**, definition of, 243.



## INDEX.

- RELIGION**, establishment of prohibited, 563, 564.  
**RELIGIOUS** liberty, secured by constitution, 563.  
**REPRIEVE** and pardon, power of, where vested, and why, 90.  
**REPUBLIC**, defined, 38.  
**REVENUE**, defined, and power to raise, where vested, 134.  
**RIGHT** of suffrage, definition and extent of, 55, 56.  
**RIGHT** of people against unreasonable searches and seizures secured, 570, 571.  
**RIGHTS** and powers of states and people, what reserved by, 578, 582.  
**ROBBERY**, crime defined, 733; how punished, 740.  
**SAFETY-FUND**, in New-York, how created and replenished, 940.  
**SEARCHES** and seizures, how authorized, 570.  
**SHERIFFS**, origin and duties of, 113.  
**SINKING-FUND**, national, how provided, and for what purpose, 287-288.  
**SLANDER** and libel, definition of, and law concerning, 592-596.  
**SLAVE-TRADE**, foreign, how long tolerated by constitution, 427; laws concerning, 382, 383.  
**SPEAKER** and officers of legislature, how chosen, and duties of, 71, 72; of congress, 214.  
**STOCKS**, what, and how created, 285, 932.  
**TAX** and taxes, different kinds of, defined, 131, 135, 136.  
**TREATIES**, how made, 27, 479, 480; supreme law of the land, and why, 554, 555.  
**VACANCY**, in state representation in congress, how filled, house, 212, 213; senate, 220, 222; in office of President 468-470; in subordinate executive offices, 487.  
**VALUE**, intrinsic and exchangeable, defined, 749.  
**WARRANTY** of title, 650, 651.  
**WEALTH**, definition of, 748; by what produced, 751.



## RECOMMENDATIONS.

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*From Professors Seager and Hoyt.*

GENESEE WESLEYAN SEMINARY, LIMA, May 10, 1843.

Mr. ALLING—*Dear Sir*: Having examined, with some care, your last edition of the "*Science of Government*," and being entirely satisfied with the plan and design of the work, with pleasure we give it our approval and recommendation.

In a government constituted as ours is, perhaps no knowledge is of more *practical* importance than that which is so *fully, conclusively, and systematically* presented in this treatise; and yet, in the great mass of community, there is a lamentable deficiency in regard to this knowledge. We think that the "*Science of Government*," or some other book of that nature, should be introduced, and *studied* in our District Schools and Academies. Of the many elementary works that have been published upon the structure and powers of our government, we know of no one that presents so much useful information in so small a compass, and combines in itself so many excellencies, as the "*Science of Government*."

Entertaining these views of the merits of the above work, we intend to add it to the text-books used in this Institution, and shall use our influence to cause its adoption in the Schools of this section.

SCHUYLER SEAGER,  
LOCKWOOD HOYT.

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*From Julius Bates, A. M., Principal of the Brockport Collegiate Institute.*

BROCKPORT, Sept. 20, 1843.

Mr. ALLING—*Dear Sir*: Some three years since, YOUNG'S SCIENCE OF GOVERNMENT was placed in my hands for examination—and from the perusal then made, I cordially

gave it my decided approbation. It has since been extensively used as a *text-book* in the Institution of which I have charge—and I am happy in being able to say, that my good opinion of the work is confirmed by its use. Every young man should *study* and become very familiar with all parts of it; for in my estimation no one is qualified to make laws or administer them, or to vote for those who do, without being well informed in the principles laid down and explained in this book. It should be found upon the shelf of every family library, and in the satchel of every school-boy.

JULIUS BATES.

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*From Stephen W. Taylor, Prof. of Math. and Nat. Philosophy, in Hamilton Literary and Theological Institution.*

March 15, 1843.

DEAR SIR,—Next in value to the Book which teaches our children and youth the true religion, must be a manual well adapted to make them acquainted with the foundation and frame-work of the peculiar government under which they live, and to qualify them better to appreciate the rights and privileges which it is designed to secure. Such a book, in my opinion, is the "*Introductinn to the Science of Government*," by A. W. YOUNG. Were this manual used by children in common and select schools, as a *reading* book, it would essentially aid them, not only in gaining intelligent views, but ultimately in the actual performance of many important duties which await them as citizens of our happy republic.

STEPHEN W. TAYLOR.

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*From the Wayne Sentinel, Palmyra, March 8, 1843 :*

SCIENCE OF GOVERNMENT.—Until recently, this, the most important of sciences to a free people like ours, has been the most neglected, perhaps, of all those taught in our schools. This should not be so; and we are happy to believe that the omission is now supplied, or may be, by the work of Mr. ANDREW W. YOUNG, entitled, "*Introduction to the Science of Government, and Compend of the Constitutional and Civil Jurisprudence of the U. States*," a handsome, revised edition of which has just issued from the press of WILLIAM ALLING, at Rochester. This work appears to us to be admirably cal-

culated to impart that general knowledge of the political affairs of our country, and of the form and nature of our governmental institutions, which should be deemed an essential requisite in the education of the rising generation. In short, the book is designed to inculcate that knowledge of our government which is necessary for the proper discharge of those duties which, as a citizen, every man owes to his country. We have no hesitation in recommending its introduction as a class-book in our schools and academies, and as a book of reference and study into every family.

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*From the Rochester Democrat, March 21, 1843.*

A USEFUL BOOK.—WILLIAM ALLING has published Young's "*Introduction to the Science of Government*," a work destined to occupy a conspicuous place as a text-book in our schools and academies. It is a treatise upon the nature of our institutions—a lucid commentary upon the Constitution and civil jurisprudence of the United States, to which is added a brief treatise on Political Economy. A work of this kind has long been wanted in our schools, and in providing the *desideratum*, the publisher will render an important service to the country, and secure a handsome profit to himself.

It is an equally desirable publication for young men or old, who wish to become better acquainted with the theory of our government. No one can read it but with profit, and we hope the work may meet with the encouragement which it deserves.

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*From the Ontario Repository, Canandaigua, March 15, 1843.*

YOUNG'S INTRODUCTION TO THE SCIENCE OF GOVERNMENT.—This unpretending work is intended to furnish what has long been regarded as a *desideratum* in the course of education in this country, viz.: a well-digested treatise on the principles of government, and Constitutional jurisprudence, adapted to the use of Common Schools and academies. It is written in a plain and familiar style, and as a text-book upon the science of Political Economy, we believe it is better adapted to its end than any work which has yet emanated from the American Press. It should be adopted as a class-book in all our schools and academies, and find a place in the library of every young student.

*From the Lyons Western Argus of March 8, 1843.*

SCIENCE OF GOVERNMENT.—A work bearing this title, being a compend of the Constitutional and civil jurisprudence of the United States, with a brief treatise on Political Economy, has been presented us by Mr. ALLING, of Rochester, who is the publisher. From a hasty glance at the work, it appears to be the very thing that should find its way into every family and school in our State. Unlike many of the light publications now thrown together and called a "Book," this work is well calculated to make every citizen acquainted with political and Constitutional law, civil rights and privileges, Political Economy, and, in fact, the whole machinery of government. We hope to see this work generally introduced into our schools.

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*From the Utica Observer of January 31, 1843.*

INTRODUCTION TO THE SCIENCE OF GOVERNMENT.—This is just the work called for by the wants of the public. Our youth are taught in many valuable branches of science, and yet enter the world almost entirely ignorant of the science of human government, and particularly of that of our own favored country.

It is not enough for the rising generation to know that certain things exist in the machinery of government; but we hold that they are morally bound to understand the principles and reasons of government, and to be able to judge as well as man can judge, between truth and error in its administration. This work, or some other on a similar plan, should be introduced as a text-book in our common schools; for which, by its plainness of style and simplicity of arrangement it is peculiarly adapted.

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*From Prof. N. Brittan, of the Collegiate Institute, Rochester, New-York :*

ROCHESTER, Oct. 9, 1843.

MR. WM. ALLING,—Dear Sir, I formerly used, as a Text Book, the earlier edition of Mr. Young's "*Science of Government.*" I then regarded it as a work embodying the elements of an important science, and gave it the decided preference to any other treatise on the same subject.

The neat and durable form in which it appears from your press, together with the emendations and additions which it has received, in my estimation, greatly enhances its former merits. Its wide circulation and adoption in the Common Schools and Academies of our country, will, I am confident, be regarded by every intelligent citizen, but as a well deserved tribute to its worthy Author and Publisher, and a result most earnestly desired, by

Your obedient servant,

N. BRITTAN.

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*From the Bath Constitutionalist, of April 12, 1843.*

"INTRODUCTION TO THE SCIENCE OF GOVERNMENT, AND A COMPEND OF THE CONSTITUTIONAL AND CIVIL JURISPRUDENCE OF THE UNITED STATES: WITH A BRIEF TREATISE ON POLITICAL ECONOMY," is the title of a book, by *Andrew W. Young*, intended for schools and families. It is divided into four parts: Principles of Government—Government of the United States—Civil Jurisprudence of the United States—and Political Economy.

It shows what are the "principles of government," in a plain and simple manner; so plain, that if it were introduced into our Common Schools, it would be instrumental in qualifying our young men to act well their part in society. It contains a concise history of the settlement of the Colonies, and by whom, the causes of the Revolution, Declaration of Independence, Confederation, adoption of the Constitution, the duties of Congress, the President, and all Officers of Government—in short, it contains a summary of all the laws of the United States, with the Constitution, and the Constitution of the State of New-York, and is alike interesting to both the old and young. It should be read in all our Common Schools, and be in the possession of every family. It would also be a good library book for our Common School Libraries, and thereby place it in the hands of every one. It is for sale by Messrs. R. L. UNDERHILL & Co., at their Bookstore, in this village.

*From Rev. Dr. Dewey, Principal of the Collegiate Institute,  
Rochester :*

ROCHESTER, Oct. 14, 1842.

As I have taught several classes in Mr. Young's "*Science of Government*," I have no doubt of its excellence, or of its adaptation to diffuse through all portions of society that knowledge which should be acquired by every citizen. The work should be found in every family, and taught in every academy or school of either sex, who have reached adequate years. The addition of the Constitution of the State of New-York, is a very great improvement, and makes the work more emphatically a manual of political and Constitutional law, civil rights and privileges, and Political Economy, for our citizens.

C. DEWEY.

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*From James R. Boyd, Principal of Black River Literary and  
Religious Institute :*

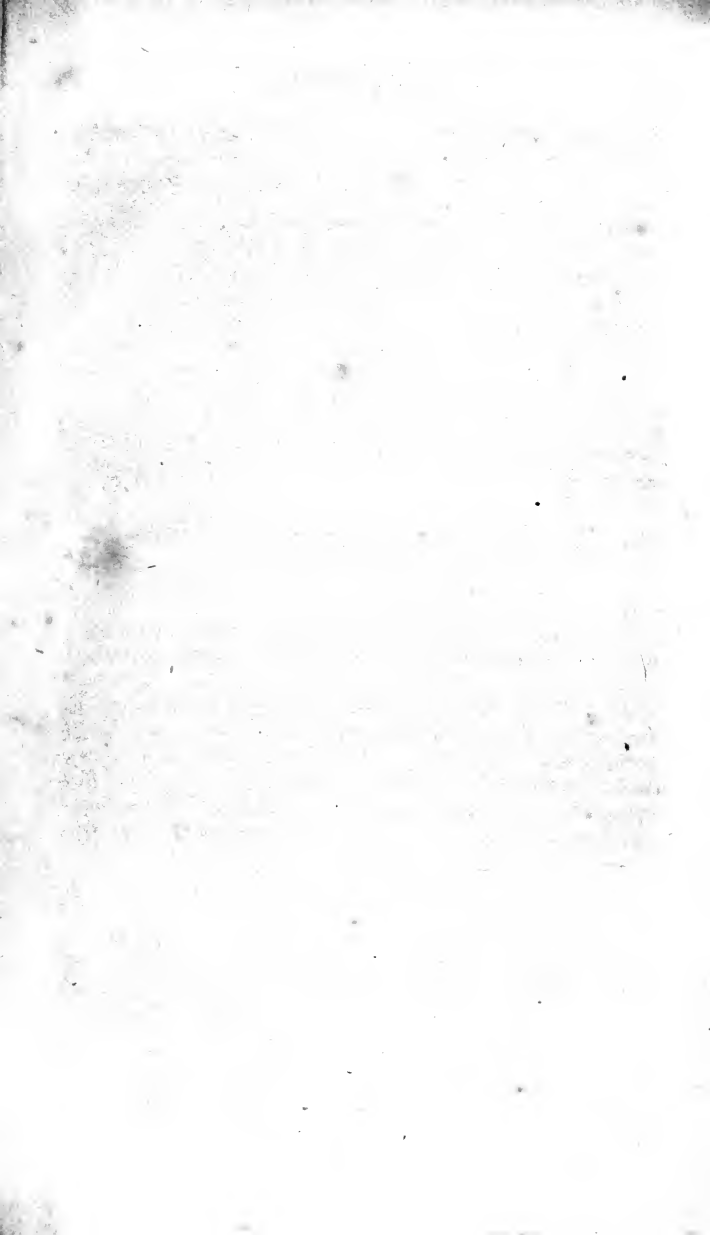
WATERTOWN, Jeff. Co., March 1, 1843.

From an examination of Young's "*Science of Government*," I am fully satisfied that the above recommendation of it by Dr. Dewey, is perfectly just ; and would express the hope that this work may find favor extensively among the teachers of academies, and be adopted as a text book for the youth under their charge. It will be found by young men, an admirable preparative for an intelligent discharge of their duties as citizens, and a faithful expounder of their political rights and interests.

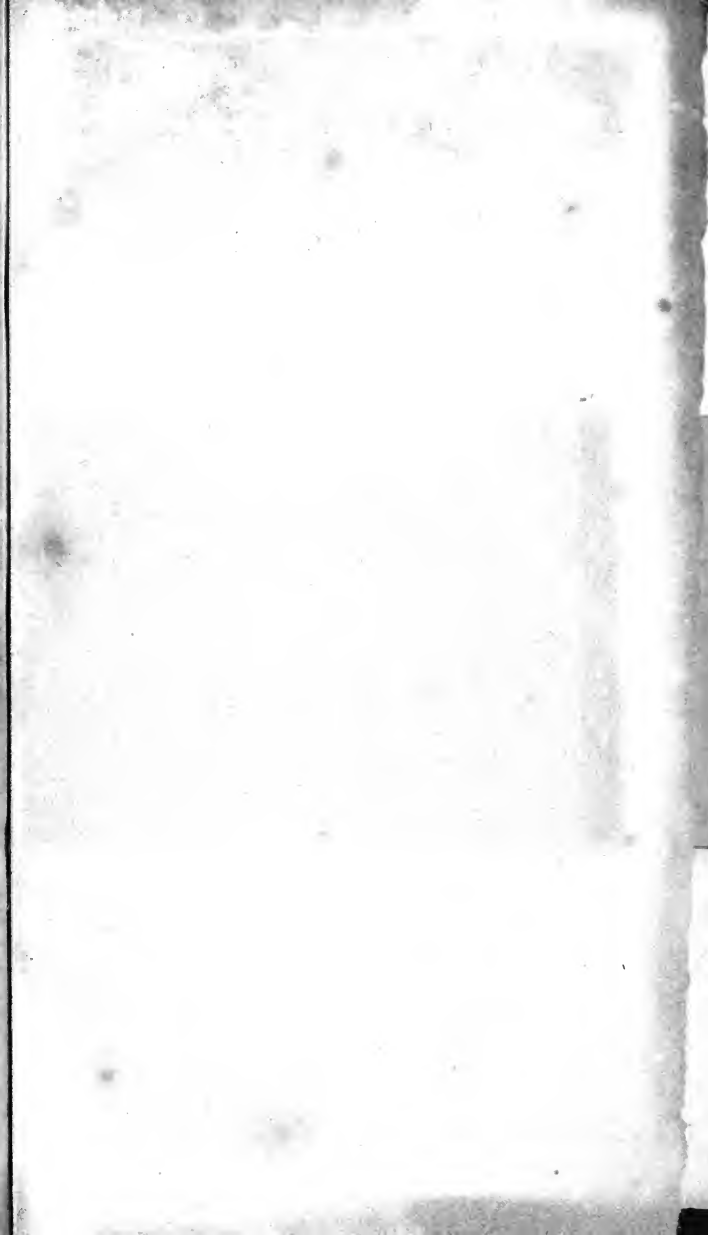
JAMES R. BOYD.











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